EXHIBIT I

Memorandum on the International Law Questions Involved in United States v. States of Louisiana, et al.

By Louis B. Sohn*

1. The Submerged Lands Act transferred to States certain property rights with respect to lands beneath navigable waters and the natural resources within such lands and waters "within the boundaries of the respective States." The term "boundaries" was defined as including the boundaries of a State in the Gulf of Mexico "as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress," but in no event extending more than three leagues into the Gulf of Mexico.

The statute proceeds clearly on the assumption that under both the law of the United States and international law, the property rights in the resources of the continental shelf are vested in the United States. The only question left open in the statute is where the dividing line should be drawn between federal and state property in cases in which the historic boundaries of the Gulf States extended beyond three geographical miles. This question

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seems to be principally a question of fact, i. e., where were the actual boundaries of these States at the crucial dates chosen by Congress. According to Section 4 of the Submerged Lands Act, a State's boundary could have been established by several alternative methods: "by its constitutions or laws prior to or at the time such State became a member of the Union," or by Congressional approval. Whether State boundaries in the Gulf of Mexico have been established by any of these acts, is again a question of fact, or in some cases a question of interpretation of the relevant document.

2. All these questions are exclusively questions of domestic law and no issues of international law seem to be involved here. The contention of the United States is, however, that the relevant State boundaries "have never had any validity under international law" (Brief for the United States, p. 104). This contention is denied by the defendant States, which claim that their boundaries did not at the relevant dates violate any rules of international law on maritime boundaries.

If, contrary to the view presented in section 1, above, the Supreme Court should wish to discuss the question of international law raised by the United States—i. e., whether State acts extending the boundaries of the Gulf States three marine leagues into the Gulf of Mexico were invalid under international law as it existed at the crucial period, i. e., between 1812 and 1868—the following considerations should be taken into account.

3. It is a recognized principle of international intertemporal law that "a juridical fact must be ap-

preciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises." [Judge Huber in the *Island of Palmas Case* between the United States and the Netherlands, 1928; 22 *American Journal of International Law 883* (1928); 2 United Nations, *Reports of International Arbitral Awards 845* (1949).] In another territorial dispute it has been said that "The right of nations to countries discovered in the sixteenth century is to be determined by the law of nations as understood *at that time*, and not by the improved and more enlightened opinion of three centuries later." [Secretary of State Upshur to Mr. Everett, American Minister to Great Britian, October 9, 1843; 1 Moore, *A Digest of International Law* 259 (1906.)]

Similarly, in the present case, the legal validity of the acts of the Gulf States by which their boundaries were extended into the Gulf of Mexico would have to be evaluated in the light of the rules of international law which existed in the first half of the nineteenth century. The problem should be approached in the same way and by the same method as the Supreme Court or an international court would have approached them if it had to decide the issue in the very year in which the crucial events transpired, i. e., 1812, 1817, 1819, 1836, 1845 or 1868, as the case may be.

Consequently, in trying to decide upon the validity or not of each State act, one has to determine first what was the rule of international law applicable to the act at the time that act was enacted or approved. Later authorities can be used only when

it is clear that there has been no change either in the rule or its scope, or where a later authority has dealt with the matter from the point of view not of its own time but in a historical manner, in the light of the rules of the period in which the relevant facts occurred. Of course, it may be difficult to pinpoint the existence of a particular rule at a certain date and for that reason it is generally permissible to consider such contemporary sources of law as are not too far removed in time and spirit from the crucial date. On the other hand, there may be cases in which certain principles have persisted for such a long time without any change that it is not necessary to prove their existence at a particular time. In such a case the burden of proof would be on the party trying to persuade the Court that at a particular point in time there was a temporary departure from the general princple.

4. When these principles are applied to the problem of the rights of the Gulf States in the adjacent waters of the Gulf of Mexico in the first seventy years of the nineteenth century, the following questions would seem to emerge:

(a) What were at that time the basic rules of international law with respect to the extension of the jurisdiction of a nation over the sea adjacent to its territory?

(b) Did the same rules apply to all aspects of jurisdiction over the neighboring sea or were there different rules for different purposes?

(c) Were these rules of universal applicability or did they allow regional departures either from

the main principles or from some of their basic features?

(d) Were any departures from these rules permitted on the basis of "historic" rights?

(e) To what extent was a State permitted to acquire special rights with respect to the subsoil of the sea and its resources?

5. There can be no doubt that, by 1812, the rule that a State had the right to extend its jurisdiction over the areas of the sea adjacent to its territory was firmly established. That rule can be traced at least to Bartolus de Sassoferrato and his pupil Baldus de Ubaldis, and it survived without any difficulty the battle royal for the freedom of the seas. Grotius and his followers and Selden and his adherents disagreed on the dominion over the vast oceans, the high seas, but there was no disagreement between them about the right of a State to extend its jurisdiction over bays and straits embraced by its territory and over a limited area of the sea adjoining that territory. The following summary of the situation at the beginning of the nineteenth century may be considered as representing the general consensus on the subject:

> " . . . Originally it was taken for granted that the sea could be appropriated. It was effectively appropriated in some instances; and in others extravagant pretensions were put forward, supported by wholly insufficient acts. Gradually, as appropriation of the larger areas was found to be generally unreal, to be burdensome to strangers, and to be unattended by

compensating advantages, a disinclination to submit to it arose, and partly through insensible abandonment, partly through opposition to the exercise of inadequate or intermittent control, the larger claims disappeared, and those only continued at last to be recognised which affected waters the possession of which was supposed to be necessary to the safety of a state, or which were thought to be within its power to command. Upon this modification of practice it may be doubted whether theories affirming that the sea is insusceptible of occupation had any serious influence. They no doubt accelerated the restrictive movement which took place, but outside the realm of books they never succeeded in establishing predominant authority. The true key to the development of the law is to be sought in the principle that maritime occupation must be effective in order to be valid. This principle may be taken as the formal expression of the results of the experience of the last two hundred and fifty years, and when coupled with the rule that the proprietor of territorial waters may not deny their navigation to foreigners, its reconciles the interests of a particular state with those of the body of states. As a matter of history, in proportion as the due limits of these conflicting interests were ascertained the practical rule which represented the principal became insensibly consolidated, until at the beginning of the present century it may fairly be said that though its application was still rough it was definitively settled as law."

" . . . In claiming its marginal seas as property a state is able to satisfy the condition of

valid appropriaton, because a narrow belt of water along a coast can be effectively commanded from the coast itself either by guns or by means of a coast-guard. In fact also such a belt is always appropriated, because states reserve to their own subjects the enjoyment of its fisheries, or, in other words, take from it the natural products which it is capable of yielding. It may be added that, unless the right to exercise control were admitted, no sufficient security would exist for the lives and property of the subjects of the state upon land; they would be exposed without recognised means of redress to the intended or accidental effects of acts of violence directed against themselves or others by persons of whose nationality, in the absence of a right to pursue and capture, it would often be impossible to get proof, and whose state consequently could not be made responsible for their deeds. Accordingly, on the assumption that any part of the sea is susceptible of appropriation, no serious question can arise as to the existence of property in marginal waters." Hall, International Law 124-26 (1880).

6. While there existed this general agreement on the basic principle, this agreement did not extend to two important aspects of its application: the extent of the adjacent area of the sea which could be made subject to the jurisdiction of the neighboring State and the amount of dominion and jurisdiction which could be exercised over that area. As Chancellor Kent pointed out, "The extent of jurisdiction over the adjoining seas, is often a question of difficulty, and of dubious right." [1 Kent, *Commentaries on American Law* 25 (3rd ed., 1836).] He added

that "All that can reasonably be asserted is, that the dominion of the sovereign of the shore over the contiguous sea, extends as far as is requisite for his safety, and for some lawful end." [*Ibid.*, at 28.] The rule here, as in many other areas of international law was the rule of reasonableness. Chief Justice Marshall put it down very clearly in a parallel case: if the means used by a State "are such as are reasonable and necessary to secure their laws from violation, they will be submitted to." [*Church v. Hubbart*, 2 Cranch 187, at 235 (1804).] In a similar way, Professor Lauterpacht stated recently that the doctrine of the freedom of the seas "con be safeguarded only if it is acted upon in accordance with its true purpose and the ever valid test of reasonableness." [H. Lauterpacht, "Sovereignty over Submarine Areas," 27 *British Year Book if International Law* 376, at 407 (1950).]

What is reasonable depends on the circumstances of each case and on the spirit of the times. From the days of Bartolus to Alberico Gentili, it seemed quite reasonable to extend national jurisdiction one hundred miles into the sea. [Gentili, *Hispanicae Advocationis Libri Duo* 32-33 (ed. of 1661, reprinted in Classics of International Law, 1921).] The famous bull of Pope Alexander VI dividing the New World between Spain and Portugal in 1493, drew the boundary line 100 leagues from the Azores and Cape Verde Islands, and the Treaty of Utrecht of 1713 dealt with fisheries up to thirty leagues from the coasts of Nova Scotia. [1 Davenport, *European Treaties Bearing on the History of the United States and Its Dependencies* 71, at 75, 77 (1917); 3 *idem*

192, at 212 (1934).] But when the limit of 100 miles was enacted by Russia in 1821, it led immediately to many protests. [See, e. g., the American protests in 4 *American State Papers: Foreign Relations* 861, 863 (ed. of 1834).] On the other hand, one may note the statement in the Declaration of Panama of October 3, 1939, that the American Republics must "as a measure of self-protection insist that the waters to a reasonable distance from their coasts shall remain free from the commission of hostile acts," and that they are entitled to establish a 300-mile zone for that purpose. [*U. S. Foreign Relations*, 1939, Vol. 5, pp. 35-37.]

7. During the eighteenth and nineteenth centuries one can observe continuous attempts by various nations, and their publicists, to devise methods for shrinking the sea area subject to the jurisdiction of the adjacent States. To the question what limit is reasonable, various answers were given, each designed to diminish the control of the sea-bordering States over the neighboring waters. It was admitted quite quickly that claims to sea territory stretching from the coast 100, 60 or 30 miles, or to a distance which may be traveled by a ship in two days or even one day, were not reasonable. But once the struggle was narrowed down to distances below twenty miles, several "reasonable" rules made their appearance, and there seemed to be no valid reason to choose one of them rather than another.

For instance, in order to determine which bays were to be considered to be within the nation's jurisdiction, the rule was developed of the line of vision—if a person on a boat in the middle of the bay could

see the land on both sides, the bay was within a nation's jurisdiction. It seemed reasonable to apply that rule also to the neighboring sea—if a person could see the land from the mast of the boat, he could no longer claim that he did not know that he was near the coast. It was felt also that when foreign vessels either fish or wage war in the sight of land, the local population might justly consider itself or its economic interests in danger, and the coastal State should be entitled, therefore, to prohibit such activities. [For a modern reference to this reasoning, see the statement by Prime Minister Churchill of December 25, 1939, in which he informed President Roosevelt of instructions given the British ships to arrest or attack enemy supply vessels only "out of sight of United States shores." *U. S. Foreign Relations*, 1939, vol. 5, p. 121.] In some areas, e. g. Scotland, and in some treaties the rule of jurisdiction over the area within the sight of the coast did, therefore, develop. Though state practice did not measure this distance in miles, in view of the differences in the height of the masts and in the vision of various persons, some authors made an attempt to ascribe a specific distance to the line-of-vision rule, but their estimates of the average differed from twelve to twenty miles. The distance of "upwards of twenty miles" was mentioned, for instance, in this connection by Jefferson in his notes to foreign ambassadors of November 8, 1793. [6 *The Writings of Thomas Jefferson* 440, 442 (ed. of 1895).]

Another rule, which was also based on the principle that the ship master should have a means of knowledge that he was approaching a foreign coast,

relied on the measurement of the depth of the water —if a ship's lead could reach the bottom, this was a warning that foreign land was near and that the ship was within the neighboring nation's jurisdiction. Thus Valin, in his famous commentary on the French maritime regulations, after dismissing other rules, stated that "it would have been better perhaps to reckon the domain over the adjacent sea by the sounding-lead, and to assign its limits exactly at that point where the lead ceased to fetch bottom." [2 Valin, *Nouveau Commentaire sur l'Ordonnance de la Marine* 638 (1760).] It may be noted that this commentary was well-known to American statesmen and was relied on by them in the 1793 dispute with France. [See e. g., Randolph's opinion of May 14, 1793, 1 *Op. Att. Gen.* 15, at 17 (ed. 1841); Hamilton's statement of December 6, 1796, reprinted in 6 *The Works of Alexander Hamilton* 215, at 218-20 (ed. of 1904).] In the above cited correspondence with foreign ambassadors, Jefferson referred indirectly to the depth rule, when he pointed out that the United States might in the future claim a limit broader than three geographical miles in view of the special character of the American coast, "remarkable in considerable parts of it for admitting no vessels of size to pass near the shore." [6 *The Writings of Thomas Jefferson*, 440, 442 (ed. of 1895).] While this rule was relevant in 1793, it became even more important after the admission of the Gulf States into the Union, as the coastal waters of the Gulf were much more shallow than the waters near the Atlantic coast.

Closely connected with this principle was another one based on the idea that a State had the right and the duty to protect coastal navigation, i. e., vessels plying between various ports on the coast, as distinguished from intercontinental navigation across the high seas. In many countries cabotage between domestic ports was reserved exclusively to domestic vessels, and there seemed to be sufficient reason to grant them special protection. This might have been the meaning of Jefferson's statement in 1793 that the United States was entitled to "as broad a margin of protected navigation, as any nation whatever." [6 *The Writings of Thomas Jefferson* 440, 442 (ed. of 1895).] The special conditions in the Gulf of Mexico, where the coastal vessels had to stay a little further from the coast because of the shallowness of water, would have justified extending the margin of protection for the coastal shipping to at least three leagues. It may be noted that the main reason given by the United States for extending a neutrality zone to 300 miles by the Declaration of Panama of 1939, was to prevent belligerent activities "within waters adjacent to the American continent which embrace normal inter-American maritime communications," and to allow the American Republics "to pursue their normal peacetime trade and commerce in waters adjacent to their shores." [*U. S. Foreign Relations*, 1939, vol. V, at 87, 88.] By analogy, one could say that a hundred years earlier, the United States was entitled to claim at least three leagues for the purpose of protecting normal peaceful trade and commerce between its harbours in the Gulf.

A fourth rule, applicable principally to the limited problems of naval warfare, was based on the range of the cannon. This principle could be justified in several ways. In the first place, the ships of one belligerent were entitled to the protection of a friendly, neutral State against attacks by the other belligerent near the shores of the neutral State. Such protection could be effectively given either by the naval vessels of the neutral State stationed near the coast or by the guns of coastal fortresses. The first method was mentioned by the early writers, but it was later abandoned as jurisdiction based on the presence of a fleet was considered purely temporary and it would have to shift constantly with the movement of the ships. The second method, based on the range of the guns of a fortress, became immediately popular as a limit for belligerent activities. Originally, this protection rule was applied only in an area surrounding the actual location of coastal fortresses, and the width of the area depended on the actual range of the guns of a particular battery. Later the application of the rule was extended to coasts where there were no batteries and instead of the actual range of a gun, an average or maximum range was substituted. This process was speeded up by the fact that in the meantime another justification was developed for the rule, namely that the purpose of the rule was also to prevent the possibility of damage on the shore being caused by an exchange of shots among belligerent vessels. From that point of view, the range of guns on the shore was irrelevant; what mattered most was the range of the cannon on board belligerent ships. Both these reasons justified the application of a prohibition of belligerent activities

to an area along the coast of a State to be measured by the range of the cannon, usually the maximum rather than the actual or average range, and this principle was applied in the second half of the eighteenth century and first half of the nineteenth century in many national regulations, bilateral treaties and diplomatic exchanges. [For a history of this rule, see Walker, "Territorial Waters: The Cannon Shot Rule," 22 *British Year Book of International Law* 210-31 (1945).]

It is not surprising, therefore, that when the United States Government was looking around for a principle of international law on which it could base its opposition to French belligerent activites off the American coast, it resorted to the cannon shot rule, i. e., "the utmost range of a cannon ball, usually stated at one sea-league." But in his letters to foreign envoys Jefferson made it clear that this was a minimum rule of a provisional character, and that this limit was to be applied only to the prohibition of hostilities in a zone of protected navigation. [6 *The Writings of Thomas Jefferson* 440-42 (ed. of 1895).] The Neutrality Act of 1794 was similarly limited to "cases of captures" by belligerents. [1 Stat. 381, at 384.] There is no intimation, either at that time or for a long time thereafter that the United States considered the cannon-shot or three-mile rule as reasonable for all purposes, and in particular as the basis for a maritime boundary delimiting the utmost reach of American jurisdiction.

Logically, if the area between the shore and the three-mile limit of the cannon shot were considered as part of the territory of the United States for all

purposes, then the prohibition of belligerent activities should have extended three miles further in order to ensure that there would be no interference with peacetime activities in the first three-mile zone. To the extent that the purpose of the rule was to safeguard the lives and property of the inhabitants of the country engaged in peaceful pursuit at home, the rule would seem to require that navigation and fishing in the three-mile zone be equally safeguarded from intentional or accidental shots of belligerents. Consequently, such activities should have been removed at least three miles from the original three-mile zone, and belligerent activities should have been prohibited within a six-mile zone rather than a three-mile zone only. This logical step was taken by Spain and several other nations which adopted the six-mile or double cannon-shot rule. From the point of view of reasonableness, there would seem to be no objection to such a rule, and the objections made by the United States against that rule could be justified only where that Spanish rule interferred with historical rights of navigation in international straits between the Atlantic and the Gulf of Mexico. The American protest of July 7, 1855 was based clearly on the ground of interference with "thoroughfares of commerce" and was thus within the exception stated by Chief Justice Marshall in *Church v. Hubbart*, where it was recognized that in a channel, where a great amount of commerce passes, seizures "must necessarily be restricted to very narrow limits." [11 Manning, *Diplomatic Correspondence of the United States: Inter-American Affairs, 1831-1860*, 214, at 217; 2 Cranch 187, at 234-36.] It

may also be noted that Secretary of State Seward wrote in 1863 that "The United States, under ordinary circumstances, could not, so far as I am able to judge, have any special interest in denying to Spain the claim she makes of a maritime jurisdiction exceeding three miles around the island of Cuba, or elsewhere." [*Papers Relating to Foreign Affairs*, 1863, Part 2, p. 905.]

In any case, it is important to remember that the cannon-shot rule and its temporary equivalent the three-mile rule were designed originally for one purpose only, i. e., for keeping belligerents away from the coastal waters, and where applied only in areas closely connected with belligerent activities. For other purposes other rules were devised.

8. In fact, during both the crucial period of 1812-68 and during the period immediately preceding it, there is ample evidence that the test of reasonableness of a distance depended to a large extent on the purpose for which a particular limit was established. During these periods jurisdiction was extended into the sea for various purposes: protection of navigation against piracy, prevention of hostilities between foreign ships near the shore, assuring proper respect to the national flag, protection of the inhabitants of the coast, national security, enforcement of customs laws, criminal jurisdiction, regulation of fishing and exclusion of foreign fishermen. It was generally recognized that there may be good reasons for extending the jurisdiction of a State further into the sea for some purposes and for being satisfied with a smaller distance for other purposes. [See, e. g., A. Geouffrede La Pradelle, "Le droit de l'Etat

sur la mer territoriale," 5 *Revue générale de droit international public* 264-84, 309-47, at 338-47 (1898); 3 Gidel, *Le droit international public de la mer* 153-92 (1934).]

The practice of States, judicial decisions and writers on international law during this period seldom deal with the question in terms of a definite boundary for all purposes. Instead there are constant references to the fact that the dominion and jurisdiction of a State over the coastal sea are different from those over the land, in particular because of the right of foreign vessels to innocent passage through the territorial sea. [See, e. g., 1 Ortolan, *Règles internationales et diplomatie de la mer* 168-72 (3rd ed., 1856).] During such a passage foreign vessels are subject to the jurisdiction of the adjoining State for various purposes; the closer they get to land, the more are they subject to the jurisdiction of the coastal State; finally, when a vessel enters inland waters, local jurisdiction over it becomes almost complete. While it seems proper to adopt various laws and regulations with respect to foreign vessels navigating close to the coast, it was generally accepted that only in important matters should such laws and regulations apply to foreign vessels navigating in more distant waters. Even with respect to criminal offenses distinction was made between crimes completed on board ship and crimes the effects of which were felt aboard another ship or in the sea. [See, e. g., *R. v. Keyn*, 2 Ex. D. 63, at 81-83, 191-94 (1876).]

It is not surprising, therefore, that the Congress of the United States almost simultaneously adopted two different zones for maritime captures and cus-

toms control. While the Neutrality Act of 1794 conferred jurisdiction upon the district courts to take cognizance of "captures made within the waters of the United States or within a marine league of the coast or shores thereof", the Customs Acts of August 4, 1790, and March 2, 1799, imposed various duties on foreign vessels arriving "within four leagues of the coast" of the United States and authorized customs officers to examine and search such vessels. [1 Stat. 145, at 164, 175, and 627, at 648, 700.] Previously, during the negotiations with Great Britain over fisheries in the North Atlantic, the United States proposed a limit of three leagues as the most proper distance for exclusive fishing rights. [See, e.g., Report of a Committee of Congress of January 8, 1782, 23 *Journals of the Continental Congress*, 1774-1789, 472, at 477-78.] Chancellor Kent thought it proper to apply the four-league rule to other areas and insisted that "no belligerent right should be exercised within 'the chambers formed by headlands, or any where at sea within the distance of four leagues, or from a right line from one headland to another.' " [1 Kent, *Commentaries on American Law* 30 (1826).] There is no reason to assume that any one of these lines was considered as the absolute boundary of the United States for all purposes, or that the jurisdiction exercised within the line nearest to the shore should be considered as territorial and the jurisdiction beyond that line as extraterritorial. The label of "extraterritorial jurisdiction" applies: either to jurisdiction over all waters over which the United States exercises some jurisdiction, with the exception perhaps of the internal waters of the

United States (i.e. the "waters of the United States" mentioned separately in the Neutrality Act of 1794); or to jurisdiction on the high seas over domestic vessels in time of peace and war and over foreign vessels in time of war. But from the point of view of extra-territoriality, there is no valid distinction between jurisdiction over a three-, nine- or twelve-mile belt. [See, e.g., the French Memorandum of March 22, 1825, to the British Government, reproduced in 2 Smith, *Great Britain and the Law of Nations* 152-56 (1935); and the French letter of April 5, 1825, *ibid.*, at 157.]

9. The stand taken by the United States in 1793 is consistent with this approach. When Jefferson wrote his famous letters to Genet and Hammond, he was aware of the divergence of views as to the distance from shore to which States "might reasonably claim a right of prohibiting the commitment of hostilities." He discussed various limits, from one league to twenty miles, and mentioned the fact that the intermediate distance of "three leagues has some authority in its favour." The letter to Mr. Hammond, the British Minister, stated in particular that the President, "before it shall be finally decided to what distance from our sea shores the territorial protection of the United States shall be exercised," found "it necessary in the mean time, to fix on some distance for the present government of these questions." That letter also reserved for future deliberation "the ultimate extent" of the "margin of protected navigation," and mentioned that before final decision "it will be proper to enter into friendly conferences &

explanations with the powers chiefly interested in the navigation of the seas on our coast." Similarly, the letter to Genet stated that "Future occasions will be taken to enter into explanations with [other Powers] as to the ulterior extent to which we may reasonably carry our jurisdiction." It may be noted that no such conference for fixing definitive limits was held during the crucial period of 1812-1868. Conferences for that purpose were finally held in 1930 and 1958, but no agreement was reached at them.

The minimum distance of one sea-league, or three geographical miles, was chosen in 1793 provisionally only, for the express purpose of avoiding the possibility of opposition by other Powers, as it was "as little or less than is claimed by any of them on their own coasts." [6 *The Writing of Thomas Jefferson* 440. 441, 442 (ed. of 1895).] The acknowledged reason for presenting this narrow claim instead of a broader one was that in 1793 there was a desire to settle the dispute over the French captures off the American shore as quickly as possible and thus to avoid involvement in European hostilities. Consequently, it was thought necessary to make only a minimum claim which France would find difficult to reject. [See the statement by Alexander Hamilton of December 6, 1796, 6 *The Works of Alexander Hamilton* 215, at 218-19 (ed. of 1904); and the statement by Jefferson of 1805, reported in 1 *Memoirs of John Quincy Adams* 375-76 (ed. of 1874).] Once this dispute was out of the way, the United States could broaden its jurisdiction as it saw fit. Already in the 1793 correspondence, Jefferson made it clear that "The character of our coasts, remarkable in considerable

parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margin of protected navigation, as any nation whatever." [6 *The Writings of Thomas Jefferson* 440, 442 (ed. of 1895).] He mentioned at the same time that for jurisdiction over rivers and bays "the laws of the several States are understood to have made provision" (*ibid.*), and has thus given notice to the foreign governments that in the future jurisdiction over other areas neighboring the United States may be rightfully asserted not only by action by the Federal Government but also by State laws.

In later years, Jefferson showed clear preference for broader limits, in particular for the extension of jurisdiction to the edge of the Gulf Stream. [See the Statement by Jefferson of November 30, 1805, reported in 1 *Memoirs of John Quincy Adams*, 375-76 (ed. of 1874); and the Presidential Message of December 3, 1805, reprinted in 1 *American State Papers: Foreign Relations* 66 (ed. of 1832.)]

10. Article I of the Treaty of October 20, 1818 [8 Stat. 248, at 249], between the United States and Great Britain is often cited as the proof of common acceptance of the three-mile rule as a general rule of international law. But the very language of the treaty shows that the United States renounced in its various rights and privileges in order to obtain others. It was in the interest of Great Britain rather than the United States in this case to have the boundary further from the shore, and in order to push the fishing limits back to three miles, the United States had to abandon the historic right of its citizens to fish in

some places within three miles of the coast. The limit agreed upon was simply a result of the uneven bargaining skill of the negotiators for the two parties rather than an application of a generally recognized principle. The history of the North Atlantic fisheries and of the negotiations between Great Britain and other powers with respect to them show quite clearly that each limit was the result of a series of compromises, that concessions in one area were balanced against concessions in other areas, and that frequently the same treaty contained different limits for various fishing areas. [Note, e. g., the various limits contained in Article 5 of the Treaty of Paris of February 10, 1763, 4 Davenport and Paullin, *European Treaties Bearing on the History of the United States and Its Dependencies* 92, at 93-94 (1937); and note that during the negotiations several other limits were also considered, as may be seen in the instructions for the Duke of Bedford of October 26, 1762, reprinted in 7 *British Diplomatic Instructions, 1689-1789*, 69, at 70 (Royal Historical Society, 1934), and in the letter from the Duke of Bedford of November 3, 1762, reprinted in 3 *Correspondence of John, Fourth Duke of Bedford* 144, at 147-48 (1846).]

11. Thus it can be said that the three-mile equivalent of the cannon-shot rule was not firmly established as a general principle at the beginning of the crucial period of 1812-1868. At best, it was used by some States for some purposes, but all States have used other limits for other purposes, and some States have rejected the three-mile limit as inadequate from the very beginning. The three-mile rule was even less

firmly established at the end of the crucial period, when the improvement in the range of artillery created grave doubts about the appropriateness of the three-mile restriction. As was pointed out by the French Government in 1864, when the United States claimed the right for its warships to attack the Confederate cruiser *Alabama* near the French shore in 1864, "the distance to which the neutral right of an adjoining government extended itself from the coast was unsettled" and "the reason of the old rules, which assumed that three miles was the outermost reach of a cannon shot, no longer existed." [*Papers Relating to Foreign Affairs*, 1864, Part 3, p. 104.] This change in the situation was acknowledged by the legal literature of that period. According to Hall, the precise extent of territorial waters was not certain in 1880:

> ". . . Generally their limit is fixed at a marine league from the shore; but this distance was defined by the supposed range of a gun of position, and the effect of the recent increase in the power of artillery has not yet been taken into consideration, either as supplying a new measure of the space over which control may be efficiently exercised, or as enlarging that within which acts of violence may be dangerous to persons and property on shore. It may be doubted, in view of the very diverse opinions which have been held until lately as to the extent to which marginal seas may be appropriated, of the lateness of the time at which much more extensive claims have been fully abandoned, and of the absence of cases in which the breadth of territorial water has come into international question,

whether the three-mile limit has even been unequivocally settled; but in any case, as it has been determined, if determined at all, upon an assumption which has ceased to hold good, it would be pedantry to adhere to the rule in its present form; and it is probably safe to say that a state has the right to extend its territorial waters from time to time at its will with the increased range of guns; though it would undoubtedly be more satisfactory that an arrangement upon the subject should be come to by common agreement."

[Hall, *International Law* 126-27 (1880). See also Bluntschli, *Das moderne Völkerrecht der civilisirten Staaten* 178 (1868); Fiore, *Nuovo diritto internazionale pubblico* 174 (1865); 1 Ortolan, *Règles internationales et diplomatie de la mer* 170-71 (1856); 1 Phillimore, *Commentaries upon International Law* 237 (2d ed., 1871); Wharton, *Commentaries on Law*, 267-68 (1884); Woolsey, *Introduction to the Study of International Law* 120 (1860). *Cf., U.S. v. Smiley*, 27 Fed. 1132 (1864).] *Cessante ratione legis cessat ipsa lex* — as the principle had lost its only reasonable basis, there was no longer any reason for adhering to the principle.

12. The effect of the evidence produced in the brief of the United States for the exclusivity of the three-mile rule is rather limited, and there is an important gap in it for the crucial years 1818-1848. There can be no doubt that the theories of some writers, who have focused on the three-mile rule as a principle more certain than others, have been accepted by some Governments and became embodied in a few uni-

lateral statements or bilateral treaties. But, simultaneousy, other Governments, including such major powers as Russia, Spain and the Scandinavian States, have adopted other rules as reasonable as those approved by the first group, and have obtained support for them from many important writers, often coming from countries which have supposedly accepted the three-mile rule.

In general, the situation here is not much different from that prevailing with respect to the ten-mile limit as to bays, which was supported by the same group of States as the three-mile limit for territorial waters. In trying to determine the validity of certain Norwegian decrees of 1812, 1869, 1881 and 1889, i.e. decrees issued in about the same period as the acts of the Gulf States, the International Court of Justice pointed out that "although the ten-mile rule has been adopted by certain States both in their national law and in their treaties and conventions, and although certain arbitral decisions have applied it as between these States, other States have adopted a different limit. Consequently, the ten-mile rule has not acquired the authority of a general rule of international law." [*I.C.J. Reports*, 1951, 116, at 131.] There can be but little doubt that the International Court of Justice would have come to a similar conclusion with respect to the three-mile limit.

13. Even if it were assumed that the three-mile rule had been accepted by international law in general, and by the United States in particular, as a basic principle for determining national jurisdiction over territorial waters, international law recognizes

exceptions based on regional peculiarities or on historic grounds. It has been noted before that the correspondence of 1793 and the statements by President Jefferson in 1805 and 1806 anticipated that special rules may be issued by the United States in view of the special "character of our coast" and the "natural boundary" of the Gulf Stream. [6 *Writings of Thomas Jefferson* 440-42 (ed. of 1895); 1 *American State Papers: Foreign Relations* 66 (ed. of 1832); 1 *Memoirs of John Quincy Adams* 375-76 (ed. of 1874).] Chief Justice Marshall stated the two basic principles with his usual clarity. In the first place: If the means adopted by a State "are such as are reasonable and necessary to secure their laws from violation, they will be submitted to." Secondly: "In different seas and on different coasts, a wider or more contracted range, in which to exercise the vigilance of the government, will be assented to." [*Church v. Hubbart*, 2 Cranch 187, at 234-36 (1804).] Chancellor Kent summarized the attitude of the American Government on this question as follows: ". . . in 1806, our government thought it would not be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well-defined path of the Gulf Stream, to expect an immunity from belligerent warfare, for the space between that limit and the American shore." [1 Kent, *Commentaries on American Law* 30 (1826).] He accepted also the idea that all waters enclosed within a line drawn from the south cape of Florida to the Mississippi should be considered to be under the control of the United States. It cannot be doubted that after the extension of the

American territory to the Rio Grande, Kent would not have hesitated to draw a similar line from the mouth of the Mississippi to the Mexican boundary. In any case, in view of the "shoalness" of the Gulf coast it can be assumed that Kent would have accepted as a valid exercise of American jurisdiction the extension of jurisdiction by the Gulf States three or four leagues into the Gulf.

14. This point of view is confirmed by the attitude taken by the United States with respect to the sea boundary of Texas and the Gulf boundary between the United States and Mexico. [See the separate Memorandum accompanying the brief for the State of Texas.] Mexico seems to have always proceeded on the assumption that its jurisdiction extended three leagues or twenty kilometers into the sea and this claim was recognized, either generally or at least for some purposes, by a series of treaties concluded by Mexico in the second half of the nineteenth century. [See, e. g., treaties between Mexico, on the one hand, and China, the Dominican Republic, Ecuador, El Salvador, France, Germany, the Netherlands, Norway and Sweden, and the United Kingdom, on the other hand, concluded between 1882 and 1899; the relevant provisions are reproduced in 1 United Nations, *Laws and Regulations on the Regime of the High Seas*, at 147, 153, 154, 156, 169, 170, 171-72 (United Nations Legislative Series, 1951).] A special regional rule of international law has thus developed in the Gulf of Mexico, based on a three-league limit, which is similar in character and scope to the four-mile regional rule developed by the Scandinavian countries. It may be noted that the validity

of the latter rule was expressly recognized by the United Kingdom in the *Norwegian Fisheries Case*, despite the fact that the United Kingdom has been the staunchest supporter of the three-mile rule in recent years. [*I.C.J. Reports*, 1951, 116, at 120, 126.] If the matter of the Gulf boundaries were submitted to the International Court of Justice for decision, the Court could easily find that the three-league rule has been established as a regional principle of international law in the Gulf of Mexico.

15. Closely connected with the principle of regional rights is the principle of "historic" rights. From the very beginning of its existence, the United States has claimed certain waters along its shore as historic waters, to a large extent on the basis of laws enacted by the States of the Union. [Opinion of Attorney General Randolph, May 14, 1793, 1 *Op. At. Gen.* 15-18 (ed. of 1841); *Stetson v. U.S.*, Court of Commissioners of Alabama Claims, 1884, 4 Moore, *International Arbitrations* 4332-41 (1898). See also *Direct United States Cable Co. v. Anglo-American Telegraph Co.*, L. R. 2 App. Cas. 394, at 419-421 (1877).] Jefferson claimed in 1793 that for various bays "the laws of the several States are understood to have made provision." [6 *The Writings of Thomas Jefferson* 440, at 441, 442 (ed. of 1895).] It is quite likely that Jefferson would have considered the enactments of the Gulf States as equally valid assertions of jurisdiction leading to the creation of "historic" rights which could be invoked by the United States in disputes with other nations. The views of Chancellor Kent, who considered a large part of the Gulf as "in-

cluded within lines stretching from quite distant headlands," would seem also sympathetic to historic claims on behalf of the United States. Except for the lone and relatively mild protest by Great Britain, no nations have made objections to the widely published treaty with Mexico of 1848, which followed the three-league rule. Such general acquiescence has created rights which should not be disturbed now, after a lapse of more than one hundred years. As the Permanent Court of Arbitration said in the Grisbadarma Case in 1909, "it is a settled principle of the law of nations that a state of things which actually exists and has existed for a long time, should be changed as little as possible." [Scott, *The Hague Court Reports* 121, at 130 (1916); see also D. H. N. Johnson, "Acquisitive Prescription in International Law," 27 *British Book of International Law* 332, at 349-53 (1950).] This principle has found application also in several decisions of the Supreme Court relating to boundaries between States. [See, e.g., *Louisiana v. Mississippi*, 202 U.S. 1, at 53-54 (1906); *Michigan v. Wisconsin*, 270 U.S. 295, at 308, 316 (1926); *Arkansas v. Tennessee*, 310 U.S. 563, at 570-71 (1940).] While there might be some difficulties in establishing historic rights in areas in which there are strong principles of international law prohibiting their acquisition, less rigid requirements can be applied in situations, such as the one involved in this case, where the rules were still flexible and to a large extent uncrystallized during the crucial period.

16. The principle that jurisdiction over the marginal sea may extend to different limits for different

purposes implies the possibility of special limits for the exploitation of the subsoil of that sea and of its natural resources. To the extent that such problems were considered by the writers of the nineteenth century, they did not consider appropriation of the sea bed and the subsoil as incompatible with the freedom of the high seas. [For a summary of their views, see H. Lauterpacht, "Sovereignty over Submarine Areas," 27 *British Year Book of International Law* 376, at 399-402 (1950). *Cf.* 1 Fiore, *Nouveau droit international public* 371 (1868).] Various States have made claims in the eighteenth and nineteenth century to those portions of the sea bed which contained such exploitable natural resources as pearl oysters, chanks, corals and sponges. [See, e.g., Sir Cecil Hurst, "Whose Is the Bed of the Sea?" 4 *British Year Book of International Law* 34-43 (1923-24).] Great Britain, by the Cornwall Submarine Act of 1858, made "all mines and minerals lying below low water mark under the open sea adjacent to" the County of Cornwall a "part of the soil and territorial possessions of the Crown." [21 & 22 Vict. c. 109, s. II (1858 ed., at p. 923).]

While the jurisdictional claims of the Gulf States were general in terms, they were certainly valid with respect to all exploitable areas of the Gulf of Mexico included within the designated limits. It cannot be doubted that, if the question of mineral resources of the continental shelf were raised between 1812 and 1868, their exploitation and control by the Gulf States up to the three-league limit would have been

considered as valid under the then prevailing rules of international law.

17. *Conclusions.* The following rules of international law relevant to the issues in this case have prevailed in the crucial period (1812-1868) either generally or at least in so far as the United States was concerned:

(a) Each State was entitled to a reasonable amount of jurisdiction and control over the sea adjoining its territory to such a distance as was reasonably necessary to protect its various interests.

(b) This rule of reasonableness permitted the adoption of varying limits for different purposes, and almost all States concerned have adopted at least two different limits for the protection of different kinds of interests.

(c) At the end of the eighteenth century, previous claims to 60 or 100 miles were no longer considered reasonable. The range of valid claims was between three and twenty miles. Self-limitation to three miles by some States constituted an abandonment of rights previously acquired.

(d) The three-mile limit, representing a temporary adaptation of the cannon-shot rule, was adopted only by some States, and even by them only for certain purposes, concurrently with other limits for other purposes.

(e) The three-mile limit was adopted by the United States in order to avoid further arguments

with France and was conceived at that time as only a minimum, provisional limit. There is no indication that a later assertion of jurisdiction "within the limits of the Gulf Stream" raised any objections. In fact, this new limit was considered by Chancellor Kent as a more adequate rule than the minimum limit of three miles.

(f) Simultaneously with the three-mile limit for some purposes, the United States adopted a four-league limit for other purposes.

(g) Not only were different rules permitted for different purposes, but there was also a development of divergent regional rules in various areas of the world. Consequently it was permissible for the United States to establish, through express or tacit approval of the acts of the Gulf States, a regional rule of three leagues for the Gulf of Mexico. This development was approved by the only other nation directly concerned, i.e. Mexico, by the treaties of 1848 and 1853. The lone protest by Great Britain did not invalidate this action in view of the tacit acquiescence of other nations. This acquiescence led to the establishment of historic rights of Mexico and the United States (and its Gulf States) to a three-league belt in the Gulf of Mexico.

(h) The rights of a State within the three-league limit in the Gulf of Mexico were broader with respect to the resources of the subsoil than they were with respect to the waters of that area. If there might have been some doubt about the extent of general jurisdic-

tion over the belt of waters up to the three-league limit, no such doubt did exist about the rights of the neighboring States to exploit the natural resources of the sea in that belt or even outside of it.

(i) Consequently the acts of the Gulf States establishing a three-league boundary in the Gulf of Mexico were not contrary to any rules of international law prevailing at the relevant dates.

EXHIBIT II

Memorandum on the Question of Whether or Not the Maintenace of a Three-League Maritime Boundary in the Gulf of Mexico by the American Gulf States, at the Time They Became Members of the Union, was in Accord with International Law

by

Stefan A. Riesenfeld*

Part I

Context, Scope and Nature of the Problem to be Discussed

Prefatory Remarks

(1) Questions of international law, especially customary international law, frequently present extremely fundamental and complex problems, the answers to which hinge on a careful evaluation of a multitude of heterogeneous and, in many respects, elusive factors. As a result it is of pivotal importance that the issues which are sought to be resolved are clearly understood and defined. Therefore, even at

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the risk of appearing pedantic, tedious or verbose, pains will be taken in this memorandum to place the questions studied in their proper contextual, juristic and historical setting.

1.

Context of the Problem: Its Statutory Origin

(2) The problem to be examined, although involving questions of customary international law as existing at particular dates, arises out of a conceivable—though by no means unavoidable or indicated—construction of a United States statute, the Submerged Lands Act of 1953. [1]

Sec. 3(a) of this act provides:

> "It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources . . . be, and they are hereby, . . . recognized, confirmed, established, and vested in and assigned to the respective States . . ."

[1] 67 Stat. 29 (1953).

Sec. 2(b) of the same statute gives the following definition:

> "The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico . . . as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term 'boundaries' or the term, 'lands beneath navigable waters' be interpreted as extending . . . more than three marine leagues into the Gulf of Mexico."

Sec. 4 finally adds:

> "Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyound three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

The exact legal significance of the phrase underlying the first alternative, to wit: "boundaries in the Gulf of Mexico . . . as they existed at the time such State became a member of the Union," is one of the

matters in dispute between the United States and the Gulf States and presents various ramifications.

(3) One of the contentions made is that a boundary in the Gulf of Mexico can only have "*existed* at the time the State became a member of the Union" within the meaning of the statute if at that time such boundary was not in contravention of international law.

Accordingly, if this construction is adopted it is necessary to ascertain whether, at the date each of the Gulf States became a member of the Union, its boundary as it existed at that time was not violative of a rule of international law.

(4) Since the States involved became members of the Union at *different dates* and under *different circumstances* it is by no means obvious that the question necessitates the same answer for each of the six States involved. Therefore, this memorandum must take account of the varying bases of the boundary claims of the six States involved.

In this connection it must also be kept in mind that international law can be said to be pertinent only insofar as alternative (a) is concerned, and that this memorandum need not deal with the question of international law as it existed at a time subsequent to acquisition of Union membership status when such boundary might have been "approved by Congress."

(5) The boundary of Texas possesses certain distinct legal features by reason of the fact that Texas enjoyed independent statehood before she became a member of the Union and that her boundaries were explicitly defined by a statute of the Republic of Tex-

as of December 19, 1836, [2] which remained in force at any rate until Texas became a member of the Union by virtue of the Joint Resolution of Congress of December 29, 1845. [3] The statute in question regulated the maritime boundary as follows:

> "beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande."

(6) The situation of the other four Gulf States is different in that their territories came under United States' sovereignty by virtue either of the Louisiana Purchase or the Spanish Cession of 1819, and that their boundaries as existing at the time of their acquisition of Union membership depend either on action taken by France or Spain during the periods of their sovereignty over the area involved or upon Congressional action taken in defining the territorial boundaries or admitting such territories to statehood in the Union. The critical dates involved are 1811 (Louisiana), [4] 1817 (Mississippi), [5] 1819 (Alabama), [6] 1845 (Florida). [7]

This memorandum is not directly concerned with the question of whether or not a boundary outside of the three-mile line was established by local law at

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[2] Laws of the Republic of Texas (in two volumes), 133 (1838).
[3] 9 Stat. 108.
[4] 2 Stat. 701.
[5] 3 Stat. 472.
[6] 3 Stat. 608.
[7] 5 Stat. 742.

those dates, but only whether *if* it was so established by local law (of whatever nature) it was not violative of international law.

2.

Scope and Nature:

Import of being "not violative of international law"

(7) Perhaps the most crucial problem respecting this aspect of the controversy is an exact understanding of the significance of the possible requirement that the boundary as established by state action must not have been "not violative of international law." Not only is the issue, if properly defined, one which is principally a matter of historical nature, but it is also one which goes to the heart of the whole fabric and structure of international law because it boils down to the fundamental dilemma of whether that which must be established is the *existence* of a *permissive* rule or the *absence* of a *prohibitory* rule.

(8) This, as is apparent, is a conundrum analogous to that which had to be faced by the Permanent Court of International Justice in the celebrated case of the SS *Lotus* [8] in 1927.

In that case the Court was confronted with the question of whether Turkey had acted in conflict with international law by instituting criminal proceedings under Turkish law against a French merchant marine officer charged with having committed a criminal offense under Turkish law as the result of a collision on the high seas between a Turkish and a

[8] P.C.I.J. Rep. Ser. A, No. 9 (1927).

French vessel. The French Government contended that Turkey, in order to have jurisdiction, should be able to cite a rule of international law authorizing her to exercise jurisdiction; Turkey conversely claimed that she was entitled to exercise jurisdiction with respect to any occurrence whenever such jurisdiction was not in conflict with a principle of international law.

The majority of the Court, in a much-discussed opinion, underscored that in deciding the controversy it was confronted "by a question of principle." [9] It held that Turkey's position was correct and that the question was whether there existed any rules which prohibited Turkey from taking criminal proceedings in the particular case. The Court stated in a now famous passage: [10]

> "This way of stating the question is . . . dictated by the very nature and existing conditions of international law.
>
> "International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed."

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[9] *Id.* at 18.
[10] *Ibid.*

As a result of this fundamental approach the Court concluded that reliance on a permissive rule of international law authorizing exercise of jurisdiction in reference to an act occurring abroad would be required only "if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases." [11] However, the Court held that "this is certainly not the case under international law as it stands at present." [12] Accordingly, international law left to states "a wide measure of discretion" in the premises.

(9) Applying the approach and the analysis of the *Lotus* case to the question to be examined in the instant controversy, it follows that a maritime boundary of three leagues, or any other reasonable distance, from the shore cannot be said to have been violative of international law at a critical time unless it can be shown

(a) either, that at that time an accepted rule of customary law prohibited claims to a territorial belt of that particular width,

(b) or, that at that time the principle of the freedom of the seas was established in such absolute and all-embracing terms that any claim to a territorial belt of a particular breadth must be based on a particular sanction (title or permissive rule) of international law.

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[11] *Id.* at 19.

[12] *Ibid.*

Neither alternative, however (as will be shown later in much greater detail), finds a base in the actual evolution of international law with reference to the freedom of the seas and territorial waters. So far as the alternative listed under (b) is concerned, it may perhaps be mentioned already in this connection that the Court of International Justice in the Fisheries Case (*U. K. v. Norway*) [13] neatly and correctly distinguished between "historic titles justifying situations which otherwise would be in conflict with international law" and "application of general international law to a specific case." [14]

(10) As a result of the necessity of canvassing the two indicated alternatives it is necessary to turn to the task to be performed in ascertaining the existence or non-existence of a rule or principle.

3.

Method to be Pursued: Ascertainment of existence or non-existence of a rule of international law

(11) There is no question that the ascertainment of the existence or non-existence of a rule of customary international law is one of the most difficult juridical tasks, because it requires a marshalling of quite heterogeneous items of evidence. Since the international community is a fluid society and is in a state of continuous change and, perhaps, progressive

[13] I.J.C. Rep. 1951, 115 ff.
[14] *Id.* at 131.

development, customary international law likewise is not a stable and solidified body but flexible and subject to constant adaptation, differentiation and refinement. The determination of its content at a particular date therefore requires most careful and meticulous historical research.

(12) The nature and formation of rules of international law are usually treated by the writers on international law under the heading of Sources of International Law.[15] It is commonly stated [16] that ternational law under the heading of Sources of International Law.[16] It is commonly stated that customary international law is based on the tacit general agreement of the members of the international community that a certain conduct in the international arena is required or prescribed as a matter of law; but it is also commonly admitted that the establishment of such tacit general agreement presents tremendous difficulties.

Thus Dionisio Anzilotti, the late President of the Permanent Court of International Justice and Professor of International Law at the University of Rome, states:

> "The facts in which the tacit accord manifests itself must consist in actions on the part of

[15] See especially Anzilotti, Cours de Droit International, Vol. 1. (Traduction Francaise d'après la troisième édition italienne par G. Gidel), 66 ff. (1929); Rousseau, Principes Généraux du Droit International Public, Vol. 1 (Introduction, Sources), 106 ff. (1944); Oppenheim-Lauterpacht, International Law, Vol. 1, 23 ff. (8th ed. 1955).

[16] See *e.g.*, Anzilotti, *op. cit. supra* note 15, at 73 ff.; Rousseau, *op.cit.supra* note 15, at 815 ff.; Oppenheim-Lauterpacht, *op.cit.supra* note 15, at 15ff., 25 ff.

> the States in the domain of international relations, from which there can be culled their intention to conduct themselves reciprocally and as a matter of obligation in a particular manner." [17]

But he hastens to add,

> "It is easy to understand that the determination of the existence or scope of a rule resulting from the manner in which the States conduct themselves presents great difficulties. The factual data for such determinations are furnished by history, especially the history of international relations." [18]

(13) The celebrated Article 38 of the Statute of the International Court of Justice is in full harmony with the accepted ideas about custom as one of the principal sources of international law. It specifies that the Court, in deciding cases in accordance with international law, shall apply:

> "b. international custom, as evidence of a general practice accepted as law."

Although Professor Hudson, in commenting on the same words in the statute of the P.C.I.J., has observed that "this might have been cast more clearly as a provision for the Court's applying customary law," [19] the phrasing was retained in the statute of the pre-

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[17] *Op.cit.supra* note 15, at 74 [my translation].
[18] *Id.* at 77 [my translation].
[19] Hudson, The Permanent Court of International Justice 1920-1942, 609 (1943).

sent Court [20] and has not proven to be a source of trouble or in need of particular clarification. [21]

It is important to note that the custom must be "accepted as law" and must be pursuant to "general practice." The latter requirement deserves a few further comments.

(14) In discussing the idea of "common consent" as the basis of international law Judge Lauterpacht asks:

> "What, now, does the term 'common consent' mean?" [22]

In answering his own question Sir Hersch continues:

> "If it means that all the individuals who are members of a community must at every moment of their existence expressly consent to every point of law, such common consent could never be proved .... 'common consent' can therefore only mean the express or tacit consent of such an overwhelming majority of the members that those who dissent are of no importance as compared with the community viewed as an entity in contradistinction to the wills of its single members. The question whether there be such a common consent in a special case is not a question of theory, but of fact only. It is a matter of obser-

[20] Hudson, The Twenty-Fourth Year of the World Court, 40 Am.J.Int'l L. 1, at 35 (1946).

[21] Rosenne, The International Court of Justice, 421 (1957).

[22] Oppenheim-Lauterpacht, International Law, Vol. I, 15 (8th ed. 1955).

> vation and appreciation, and not of logical and mathematical decision . . ." [23]

However, once a rule of international law has come into existence it remains binding, despite a possibility that a state might become dissatisfied with it. Writes Sir Hersch:

> "On the other hand, no State can at some time or another declare that it will in future no longer submit to a certain recognised rule of the Law of Nations. The body of the rules of this law can be altered by common consent only, not by a unilateral declaration on the part of one State. This applies not only to customary rules, but also to such conventional rules as have been called into existence through a law-making treaty . . . ." [24]

Hence, changes in customary international law result from the same process as their creation.

(15) Other modern authors have advanced analogous views, sometimes with the addition of further clarifications and qualifications. Professor Rousseau, in particular, when discussing the "degree of generality" of acceptance required for the formation of a rule of customary international law points out:

> "With respect to the degree of generality required, textwriters ordinarily discard the necessity of unanimity and insist solely upon the consent of the States which have found themselves

[23] *Id.* at 17.
[24] *Id.* at 18.

> in a situation where they had to apply [the practice] and the absence of protests from the others." [25]

In a footnote, however, he cautions,

> "According to the principles actually in force, it is clear that a customary norm would not acquire universal force by the mere fact that it is accepted by the majority of States which belong to the international community. It is impossible to demonstrate the existence of a rule which introduced the majority principle as a proper criterion for the universal extension of customary norms." [26]

The author refers, however, specifically to the decision of the U. S. Supreme Court in *The Paquete Habana* [27] for the proposition that a nation may be bound by a rule of customary international law even though it had not applied the same prior to a particular occasion, so long as its government had not prevented by protest or other public act the general acceptance thereof.

(16) Perhaps it is useful to note in this connection that once a custom has found general acceptance as a rule of law mere unilateral action by one state is not enough to abrogate it as a matter of international force even with reference to that nation. True, national courts may have, under certain conditions, a duty to ignore it, but such enforced disregard is a

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[25] Rousseau, Principes (généraux du Droit International Public, Vol. 1, 838 (1944) [my translation].
[26] *Ibid.* [my translation].
[27] 175 U.S. 677 (1900).

matter of domestic law only and does not necessarily terminate the international force of the rule.

This proposition is all which a famous dictum by Lord Atkin in *Chung Chi Cheung v. The King* [28] implies. Said his Lordship:

> "It must always be remembered that, so far, at any rate, as the Courts of this country are concerned, international law has no validity save in so far as its principles are accepted and adopted by our own domestic law. There is no external power that imposes its rules upon our own code of substantive law or procedure. The Courts acknowledge the existence of a body of rules which nations accept amongst themselves. On any judicial issue they seek to ascertain what the relevant rule is, and, having found it, they will treat it as incorporated into the domestic law, so far as it is not inconsistent with rules enacted by statutes or finally declared by their tribunals." [29]

4.

Necessity and Sufficiency of Acceptance by the United States

(17) The principles discussed above apply not only when and where an international tribunal has to ascertain the existence and scope of a rule of customary international law, but in principle also when such task confronts an American court.

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[28] [1939] A. C. 160 (J. C. 1938).
[29] *Id.* at 167.

Thus, as has been pointed out before, the U. S. Supreme Court has held that a rule of the sea which may be regarded as accepted by the other maritime nations must be taken judicial notice of and given effect to by the U. S. courts "in the absence of any . . . public act of their own government in relation to the matter." [30] This case involved the legality of the capture, off the shores of Cuba, of a Spanish fishing vessel by an American vessel during the war with Spain; the Court, after most careful examination of all available material, concluded that a rule excepting unarmed local fishing boats from capture during maritime warfare had become a rule of international law and declared the capture unlawful.

(18) Much more complex, however, is the converse of this situation, which poses the problem whether and to what extent an American Court may examine the acceptance of a rule by other nations where United States policy has been formulated in favor of such rule.

It must be conceded that there is abundant American judicial authority for the proposition that the courts, when the adjudication of the rights of individual litigants depends upon issues involving the foreign relations or policy of the United States, will bow to a determination by the executive branch of the Government and not make inconsistent rulings. This has been applied with respect to the extent of foreign sovereignty, [31] American territorial claims, [32]

[30] The Paquete Habana, 175 U.S. 677, at 708 (1900).
[31] Williams v. Suffolk Insurance Co., 13 Pet. 415 (1839).
[32] Jones v. U.S., 137 U.S. 202 (1890).

and numerous other matters, including even the validity of acts of foreign governments. [33].

But this judicial self-restraint, although perhaps appropriate where matters of foreign policy are at stake, has no place when no concrete executive determination of a matter involving foreign relations is in issue and when no international embarrassment is even remotely foreseeable. This is so particularly in view of the fact that the United States has asserted internationally the right to the continental shelf [34] and that the only question in issue is the scope of the allocation of such rights to certain States.

(19) Certainly the question as to the state of international law relating to territorial waters at a particular historical date is not a matter with respect to which recent executive policy decisions as to the limits of territorial waters have any bearing. It seems to be quite obvious that if a decision on that issue is at all necessary the American court must determine it in such fashion as an international tribunal at that time would have determined it. In such case, however, it would not be sufficient by itself, even if the United States had considered a certain rule as established at that time, unless a general acceptance by other maritime powers could also be proven.

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[33] Bernstein v. N.V.Nederlandsche-Amerikaansche Stoomvaart-Maatschappij, 210 F.2d 375 (2d Cir. 1954).

[34] See especially the Outer Continental Shelf Lands Act, 67 Stat. 462 (1953).

5.

Resulting Scope of the Inquiry

(20) From what has been said it follows that it must be examined whether at any time prior to 1845 there was a custom accepted as law by the maritime nations which

(a) either prohibited the establishment of a maritime boundary at three leagues from the coast,

(b) or required the assent by other maritime nations to the establishment of such boundary.

Part II

The Evolution of International Law Relating to Jurisdiction Over the Maritime Belt

1.

General Considerations

(21) Basically the task to be performed in this part of the memorandum is a study of the development of state practice regarding the maritime belt and of the impact of the text-writers, with a view to ascertaining whether or not a definite international custom accepted as law can be said to have been established at any time for fixing a definite seaward boundary of the coastal states.

This, of course, is an enterprise which has been undertaken by many authors who, each in turn, have

compiled a vast amount of materials with respect to different maritime nations and different epochs. Especially important in that respect are the investigations by Fenn, [35] Fulton, [36] Kent, [37] Masterson, [38] Meyer, [39] Raestad [40] and, it is hoped, the undersigned, [41] and, for a particular aspect, Mouton. [42] On the basis of the findings of these authors and some supplemental materials published in various places, the historical picture today is much clearer than in earlier days.

(22) In appraising the situation care must be taken to take notice of the gradual refinement and differentiation of the issues involved. While originally the accommodation of conflicting particular interests was sought to be brought upon a general denominator, today it is clear that the types of interests of the coastal states involved, as well as the geographical location, may supply determinative factors in the legal evaluation of claims.

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[35] Fenn, Origins of the Theory of Territorial Waters, 20 Am.J. Int'l L. 465 (1926), and Fenn, The Origin of the Right of Fishery in Territorial Waters (1926).

[36] Fulton, The Sovereignty of the Seat (1911).

[37] Kent, The Historical Origins of the Three-Mile Limit, 48 Am.J. Int'l L. 537 (1954).

[38] Masterson, Jurisdiction in Marginal Seas with Special Reference to Smuggling (1929).

[39] Meyer, The Extent of Jurisdiction in Coastal Waters (1937).

[40] Raestad, La Mer Territoriale (1913). This work is an in part abbreviated and in part revised version of a monograph entitled Kongens Strömme by the same author published in the Norwegian language in 1912.

[41] Riesenfeld, Protection of Coastal Fisheries under International Law (Carnegie Endowment for International Peace, Monograph No. 5) (1942).

[42] Mouton, The Continental Shelf (1952).

2.

The Pre-Grotian Era and the Impact of Grotius' Ideas

(23) The doctrine of the marginal sea viewed as an historical phenomenon can be likened to a muddy stream with shifting banks and different headwaters.

Roman law had no occasion to concern itself with the international status of the adjacent sea but declared simply in a famous passage that sea and seashore were common to all. [43] When, however, the Italian city republics emerged as sovereignties in the Renaissance period and laid claims to the adjacent seas, a legal theory of territorial waters in the international sense began to appear [44] in the writings of the so-called *Post-Glossators*, especially of Bartolus and Baldus. The Roman sources presented no serious obstacle in that respect, as the differentiation between the three concepts of use (usus), ownership (proprietas) and jurisdiction (jurisdictio) offered a convenient solution. It was the celebrated Bartolus of Saxoferruto who advanced the notion that jurisdiction over land included jurisdiction over the adjacent sea within moderate limits, fixed by him at

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[43] Digests, lib. 1, title 8, lex 2.

[44] Professor Fenn, Origins of the Theory of Territorial Waters, 20 Am. J. Int'l L. 465 (1926), ascribes the doctrine of "jurisdiction" over the sea to the earlier school of the Glossators. But the passage which he cites " . . . proprietas tamen est nullius . . . sed jurisdictio est Caesaris . . . " may be one of the later "additions to Accursius' work" which were deplored more than a hundred years ago by Savigny, Geschichte des Römischen Rechts in Mittelalter, Vol. 5, p. 302 (2d ed. 1850). Unfortunately, I had no opportunity to pursue this question.

100 *miles.* [45] His views, including the 100-mile limit, were reiterated and expounded by a multitude of writers, [46] including, above all, the equally famous Baldus of Ubaldi. [47] This theory of the Italian jurists found acceptance by later writers of other nations, especially the celebrated French Jean Bodin (1577) who converted the 100 Italian miles into 30 leagues. [48]

(24) Concurrently with, but independently of, the evolution of the doctrines of the Italian school, the Nordic states developed a practice which selected the *range of sight* as the limit for various aspects of territorial jurisdiction over the adjacent sea by the coastal state, especially for exclusive fishing rights. Professor Raestad has given a careful account of the dispersed and vague indications in this respect [49] and also has pointed out that this Nordic practice was apparently transplanted into the Norman kingdom of Sicily where it was recognized by writers on feudal law of the fifteenth century [50] and survived as a matter of treaty law even into the eighteenth century. [51]

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[45] See Fenn, *op.cit.supra* note 44, at 477.

[46] *Id.*, ftns 31 and 32.

[47] Some writers have alleged that Baldus reduced the limit to sixty miles, but this view seems to have been exploded by Raestad, La Mer Territoriale, 20 ftns. 2 (1913), although it is repeated again by Sereni, The Italian Conception of International Law, 73 (1943).

[48] See Raestad, *op.cit.supra* note 47, at 20 and 62.

[49] See Raestad, *op.cit.supra* note 47, at 28 ff.

[50] See Raestad, *op.cit.supra* note 47, at 18, citing William of Perno.

[51] Treaty between the Kingdom of the Two Sicilies and the Ottoman Empire of April 7, 1740, printed in 1 Wenck, Codex Juris Gentium, 519 (1781). See the comments by Raestad, *op.cit.supra* note 47, at 55, and Sereni, The Italian Conception of International Law, 29 (1943).

(25) In practice, from time to time much more ambitious claims over certain portions of the sea were made in the Mediterranean [52] as well as in the Baltic and the North Sea. [53] It was especially, however, the extravagant claims of Portugal and Spain, which barred the trade with their colonies, that aroused angry reactions on the part of the English and the Dutch [54] and prompted the publication of Hugo Grotius' famous tract on the Freedom of the Seas. [55] In this treatise Grotius dealt chiefly with navigation and commerce and specifically excluded that portion of the ocean which lies within the range of sight. [56] Moreover, in later writings he conceded expressly jurisdictional rights over portions of the sea and advanced the view that such jurisdiction could be gained either from the coast or by means of a fleet. [57]

(26) Grotius' thesis and Dutch claims based thereon found lively repercussions and initiated a veritable diplomatic and literary battle. Shortly after the publication of the Mare Liberum James I issued a Proclamation for the Restraint of Foreign-

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[52] For the claims of Pisa, Genoa, Venice and Naples see Sereni, *op.cit.supra* note 51, at 29 ff., 73 ff.

[53] For the claims of Denmark-Norway, see Raestad, *op.cit.supra* note 47, at 57 ff.

[54] For details see Fulton, The Sovereignty of the Sea, 105 ff.

[55] Hugo Grotius, Mare Liberum, Sive de Jure Quod Batavis Competit Ad Indicana Commercia Dissertatio (Ed. by J. B. Scott, Carnegie Endowment for Intern. Peace 1916).

[56] Mare Liberum, 37 (Carnegie Endowment Edition, 1916); see the comments by Riesenfeld, Protection of Coastal Fisheries Under International Law, 12 (1942).

[57] See the analysis of Grotius' views by Riesenfeld, *op.cit.supra* note 56, at 17.

ers Fishing on the British Coasts [58] which prompted remonstrations on the side of the Dutch and the opening of negotiations. On this occasion the Dutch commissioners in 1610 took the position that "it is by the law of nations that no prince can challenge further into the sea than he can command with a cannon," a statement which has been deemed to be the diplomatic origin of the cannon-shot rule, [59] perhaps inspired by Grotius himself.

(27) Nevertheless, this pronouncement of the cannon-shot rule remained for a long time an isolated and ignored event, and the rule gained currency only when it was re-formulated and propounded by another celebrated Dutch publicist, Cornelis van Bynkershoek, who in his book De dominio maris, [60] first published in 1702, gave the twin doctrines of the freedom of the high sea and the sovereignty over the adjacent sea a widely followed pattern. It seems likely that Bynkershoek was influenced by the recent actions of the French, who on the one hand had claimed vis-à-vis Denmark in 1691 that neutrality could not be enforced beyond a cannon-shot range, and on the other hand had insisted vis-à-vis other powers that neutrality must be asserted within that limit. [61]

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[58] See Fulton *op.cit.supra* note 54, at 145 ff. and 755.

[59] See the references by Fulton *op.cit.supra* note 54, at 155, 156 and 1 Marsden, Documents Relating to Law and Custom of the Sea, 487 (Navy Records Society 1915).

[60] De dominio maris, 1702, re-edited with translation by Magoffin in the Classics of International Law (Carnegie Endowment for International Peace, 1923).

[61] See the references in Walker, Territorial Waters: The Cannon Shot Rule, 28 Brit.Y.B. Int'l L. 210, at 215 ff. (1945); Kent, The Historical Origins of the Three-Mile Limit, 48 Am. J.Int'l L, 537, at 541 (1954).

3.

Eighteenth Century Theory and Practice

(28) The assertion of the cannon-shot rule by Bynkershoek persuaded numerous later writers to follow suit and make similar statements. While no particular purpose would be served by giving a complete catalogue of the eighteenth-century writers who endorsed that principle, it may be stated that the newly emerging positivistic German school of international law, as represented by Moser and Surland, lent its support thereto. [62] Even more important for the career of this rule was its adoption by Emmerich de Vattel, whose Le droit des gens (1758) became one of the most authoritative treatises on the Law of Nations during the second half of the eighteenth century. [63] He wrote (quoting from the first English edition of 1760):

> "It is not easy to determine to what distance a nation may extend its rights over the sea by which it is surrounded. Bodinus pretends, that according to the common right of all maritime nations, the prince's dominion extends even thirty leagues from the coast. But this exact determination can only be founded on a general consent of nations, which it would be difficult to prove; each state may, in this respect, ordain

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[62] For detailed references see Riesenfeld, Protection of Coastal Fisheries Under International Law, 22 (1942).
[63] See the references by Riesenfeld, *id.* at 22 ff.

> what it shall think best, in relation to what concerns the citizens themselves, or their affairs with the sovereign: but between nation and nation all that can reasonably be said, is, that in general the dominion of the state over the neighboring sea, extends as far as is necessary for its safety, and it can render it respected.... At present the whole space of the sea within cannon-shot of the coast is considered as making part of the territory, and for that reason a vessel taken under the cannon of a neutral fortress is not a good prize." [64]

(29) Nevertheless, Vattel's views neither reflected the universal opinion of authoritative text-writers nor of the majority of maritime nations. Thus the celebrated Spanish author, de Abreu y Bertodano, in his Tratado Juridico-Politico Sobre Presas de Mar, which appeared first in 1746, [65] thought that the breadth of the marginal sea could vary between two leagues, as claimed under the British Hovering Acts, and one hundred miles, according to the nature and location of the coast involved. These views were taken as the starting point for the position of the equally famous French writer Valin, who suggested that two leagues were the *ordinary* limit for the breadth of the territorial sea and that states were at liberty to go beyond that limit where the sounding of the

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[64] Vattel, The Law of Nations, 115 (English Translation 1760).

[65] De Abreu y Bertodano, Tratado Juridico-Politico Sobre Presas de Mar, 86 (1746).

bottom was still possible and commercial navigation was not impeded by such claims. [66]

(30) The cannon-shot rule was never accepted by Denmark-Norway which, after making much more extravagant pretenses to dominion over the Northern and the Baltic Seas, gradually reduced such claims for neutrality and fishing purposes first to four leagues and later to one league, the term "league" referring to the Danish-Norwegian league equalling four nautical miles. [67] Sweden apparently adopted the cannon-shot rule for neutrality purposes and only with respect to ports between 1715 and 1756, but in that year the principle of the range of vision was established or re-established. In 1758 the dominion of Sweden was declared to extend three (long) miles (equalling 12 nautical miles) out into the open seas, and in 1779 this measure was reduced

[66] 2 Valin, Nouveau Commentaire sur L'ordonnance de la Marine, 688 (1766): "Jusqu'à la distance de deux lieues, & avec cette restriction encore, la mer est donc du domaine du Souverain de la côte voisine; & cela que l'on puisse y prendre fond avec la sonde, ou non. Il est juste au reste d'user de cette méthode en faveur des États dont les côtes sont si escarpées, que dès le bord on ne peut trouver le fond; mais cela n'empêche pas que le domaine de la mer, quant à la jurisdiction & à la pêche, ne puisse s'étendre au delà; soit en vertu des traités de navigation & de commerce, soit par la règle ci-dessu établie qui continue le domaine jusqu'ou la sonde peut prendre fond, ou jusqu'à la portée du canon . . . "

[67] For details see Meyer, The Extent of Jurisdiction in Coastal Waters, 478 ff., especially at 496 and 499 (1937); Riesenfeld, *op.cit.supra* note 62, at 211, 212 and 224; Kent, The Historical Origins of the Three-Mile Limit, 48 Am. J.Int'l L. 537, at 540, 544.

to one long mile (equalling four nautical miles). [68]

(31) Spain specifically adoped a two-leagues limit for anti-smuggling purposes in a royal order of December 17, 1760, and confirmed this measure by royal ordinance of May 1, 1775. [69] With respect to neutrality purposes, Spain expressly abandoned the cannon-shot rule in 1797 and reduced her own neutrality belt to only two nautical miles, [70] but reverted in an ordinance of June 20, 1801, to a cannon-shot rule/reciprocity system with respect to her own captures. [71] Generally speaking, however, two leagues came to be the general maritime boundary of Spain and her colonies. [72]

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[68] For details and references see Meyer, *op.cit.supra* note 67, at 54; Riesenfeld, *op.cit.supra* note 62, at 192. The cannon shot rule is found in an ordinance of February 8, 1715, with reference to captures in Swedish waters, and in a decree of July 28, 1741, relative to captures by Swedish vessels in waters of friendly powers, but confined to captures near ports; see De Staël-Holstein, Le régime Scandinave des eaux littorales, 51 Rev. de droit intern. et de législ. comp. 630, at 644 (1924); Gihl, La limite des eaux territoriales de le Suéde, 53 Rev. de droit intern. et de législ. comp. 525, at 534 (1926). It should be pointed out that Kent, Historical Origins of the Three-Mile Limit, 48 Am.J.Int'l L. 537, at 550 ftn. 69, is very much in error in asserting that the "mile" in the Swedish decree of 1758 was equivalent to the modern nautical mile. This mistaken idea has long been refuted by Gihl, *op.cit.* at 541; Soderquist. Droit International Maritime Suédois, 69 (1930); Meyer, *op.cit.* at 67, Riesenfeld, *op.cit.* at 192.

[69] For the text of these decrees see Riquelme, Elementos de Derecho Publico Internacional, con esplicacion de todas las reglas que, segun los Tratados etc. constituyen el Derecho Internacional Español, 187, 194, 197 (1849).

[70] Novisima Recopilacion de las Leyes de España, lib. VI, tit. 8 1. v (1831).

[71] Novisima Recopilacion de las Leyes de España, lib. VI, tit. 8 1. IV, § 35.

[72] 1 Riquelme, *op.cit.supra* note 69, at 213; see Riesenfeld, *op.cit.supra* note 62, at 38 and 175.

(32) It was not until 1782 that the three-(nautical) mile rule was first proposed as an equivalent to the cannon-shot rule. This idea originated with the Italian writer Galiani, who observed that it seemed reasonable to him to determine once and for all that the territorial sea should extend to three miles from land, which at that time equalled the greatest distance a cannon could shoot. [73] Galiani's suggestion was taken up by his fellow-countryman Azuni in 1795 [74] and gradually gained widespread acceptance, not only because of the author's own reputation, [75] but principally because it had meantime found endorsement by the United States.

(33) In order to appraise correctly the development and status of international law relative to the adjacent sea during the eighteenth century, it is especially important to take into consideration a series of significant treaties governing maritime interests other than those connected with neutrality and naval war and concerning non-European regions. The first of these instruments is the Treaty of Utrecht of 1713. This treaty, which contained the cession of Newfoundland and Nova Scotia by France to Great Britain, reserved certain privileges to French fishermen, but barred them from fishing in the seas, bays and other places within *thirty leagues* on the southeast coast of Nova Scotia, commencing from the island, commonly called Isle of Sables, in-

[73] Galiani, Dei doveri dei principi neutrali verso i principi guerreggianti, e di questi verso i neutrali (1782).
[74] Azuni, Systema universale dei principii del diritto marittimo dell' Europa (1795).
[75] See Riesenfeld, *op.cit.supra* note 62, at 26.

clusively, and continuing toward the southwest. [76] Fifty years later the Treaty of Paris between France, Great Britain and Spain (1763) stipulated in Article V that the French subjects should "not exercise the said fishery but at the distance of *three leagues* from all the coasts belonging to Great Britain, as well those of the continent, as those of the islands situated in the Gulf of St. Lawrence. And as to what relates to the fishery on the coasts of the Island of Cape Breton, out of the said gulf, the subjects of the Most Christian King shall not be permitted to exercise the said fishery but at the distance of fifteen leagues from the coasts of the Island of Cape Breton." [77] These provisions were renewed and confirmed twenty years later in the Treaty of Versailles. [78] It is interesting to note that identical terms were proposed for American fishermen by Great Britain in the negotiations of the peace treaty with the United States but that the United States commissioners refused to accede thereto. [79] Finally in 1790 Great Britain agreed in Article IV of the Escurial Treaty with Spain that her subjects should not navigate or engage in fishing within a distance of ten leagues from any part of the coast already occupied by Spain. [80]

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[76] Treaty of Utrecht (1713), Art. XII, 8 Dumont, Corps universel diplomatique du droit des gens, 339, 341 (1731).

[77] Treaty of Paris (1763), 1 Martens, Recueil de traités d'alliance etc., 104 (2d ed. 1818) (emphasis added).

[78] Treaty of Versailles (1783), 3 Martens, Recueil etc., 541 (2d ed. 1818).

[79] North Atlantic Coast Fisheries Arbitration, Case of the United States, 11; and Appendix, 219 (1909).

[80] 4 Martens, Recueil etc., 493 (2d ed. 1818).

All this seems to prove that at that time neither Great Britain nor the other European powers did consider the cannon-shot or three-mile rule the accepted international standard for all purposes and that they were willing to demand and concede larger belts, especially in non-European waters.

(34) It is quite significant for the subsequent development that G. F. von Martens—undoubtedly the most influential writer on international law of his days [81] —at the turn of the eighteenth century propounded the view that the states were entitled to claim a territorial belt up to three leagues.

Von Martens published the first edition of his Précis du Droit des Gens Moderne de l'Europe in 1789. It was received in the United States not long thereafter, and the United States Government is said to have persuaded Wm. Cobbett to prepare a translation. [82] The American edition was published in 1795 (with a dedication to President Washington) and, according to its author, subscribed to by the President, the Vice-President and all members of Congress. von Martens, as translated by Cobbett, wrote:

> "A custom, generally acknowledged, extends the authority of the possessor of the coast to a cannon shot from the shore; that is to say, three leagues from the shore, and this distance is the least, that a nation ought now to claim, as the extent of its dominion on the seas." [83]

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[81] See the references by Riesenfeld, *op.cit.supra* note 62, at 29.

[82] See "Advertisement" by Cobbett in the English ed. of 1802.

[83] American ed. of 1795, at 160.

In the second French edition of 1801 the author clarified his position by stating:

> "Today all nations of Europe agree that, as a rule, the straits, gulfs and the adjacent sea belong to them at least up to the range of the cannon which could be placed upon the shore. In a number of treaties even the more extended principle of three leagues has been adopted." [84]

His reference to the treaties apparently was influenced by the three-leagues stipulations in the treaties of 1763 and 1783.

As the works of von Martens went through several editions during the first part of the nineteenth century, it is obvious that a maritime boundary of three *leagues* thus had the apparent support of one of the most authoritative writers of the times.

4.

The Jeffersonian Position and the Development during the Beginning of the Nineteenth Century

(35) The foregoing survey of treaty law, state practice and legal literature prior to 1793 shows that there is no shred of evidence that any particular rule or measure determining the breadth of territorial waters had grown into a custom accepted as law. All that can be supported by evidence is that excessive claims to *maria clausa* were no longer tolerated and that otherwise the type of interest in-

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[84] von Martens, Précis du droit des Gens Moderne de l'Europe, 71 (2d ed. 1801) [my translation].

volved, the geographical location and condition of the coast, the power of the state to fulfill obligations attendant on its assertions and, in general, the reasonableness of its position were governing.

In the period immediately following, two important factors come into play and need careful evaluation:

(a) the determination of the United States to claim and, tentatively and initially, be satisfied with, a territorial belt of three nautical miles;

(b) the determination of Great Britain, following and resulting from her naval victory of Trafalgar, to pursue a policy of insistence on the three-mile principle.

(36) The United States was confronted with the question of the breadth of her territorial belt for the first time when need for such determination arose for neutrality purposes in connection with the naval war between France and Great Britain.

On October 16, 1793 President Washington wrote to Governor Lee in connection with the capture of a British vessel:

> "Three miles, will, if I recollect rightly bring the Coningham within the rule of some decisions; but the *extent* of Territorial jurisdiction at Sea, has not yet been fixed, on account of some difficulties which occur in not being able to ascertain with precision what the general practice of Nations in this case has been." [85]

[85] 33 Writings of Washington, 131 (ed. by J. C. Fitzpatrick 1931-40).

But subsequent to that date, as a result of French pressures, cabinet meetings on the matter were held and a temporary determination made. [85a] The contents thereof were communicated to the belligerents in a circular letter of November 8 by Secretary of State Jefferson. The note to Mr. Genet, the French Minister, stated:

> "It is certain that, heretofore, they [governments and jurisconsults] have been much divided in opinion as to the distance from their sea coasts, to which they might reasonably claim a right of prohibiting the commitment of hostilities. The greatest distance, to which any respectable assent among nations has been at any time given, has been the extent of the human sight, estimated at upwards of twenty miles, and the smallest distance, I believe, claimed by an nation whatever, is the utmost range of a cannon ball, usually stated at one sea-league. Some intermediate distances have also been insisted on, and that of three sea-leagues has some authority in its favour. The character of our coasts, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margin of protected navigation, as any nation whatever. Not proposing, however, at this time, and without a respectful and friendly communication with the Powers interested in this navigation, to fix on the distance to which we may ultimately insist on the right of protection, the President gives in-

[85a] For a summary of the Cabinet Decisions in question, signed by Jefferson, Knox, Randolph and Hamilton, see 4 Works of Hamilton, 480 (ed. by John C. Hamilton 1851), and 6 Writings of Thomas Jefferson, 452 (ed. by P. L. Ford 1895).

structions to the officers, acting under this authority, to consider those heretofore given them as restrained for the present to the distance of one sea-league, or three geographical miles from the sea-shore. This distance can admit of no opposition as it is recognized by treaties between some of the Powers with whom we are connected in commerce and navigation, and is as little or less than is claimed by any of them on their own coasts.

"Future occasions will be taken to enter into explanations with them, as to the ulterior extent to which we may reasonably carry our jurisdiction. For that of the rivers and bays of the United States, the laws of several States are understood to have made provision, and they are, moreover, as being landlocked, within the body of the United States." [86]

Similar passages were inserted in the communication to the British Minister, with the significant additional explanation:

"The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us in reason to as broad a margin of protected navigation as any nation whatever." [87]

(37) There can be no question that the position assumed by the United States was only taken as a temporary measure and was a minimum claim, especially in view of the fact that at that time the

[86] 6 Writings of Thomas Jefferson, 440 (ed. by P. L. Ford 1895).

[87] 6 Writings of Thomas Jefferson, 441 (ed. by P. L. Ford 1895).

United States lacked sufficient naval power to enforce observance of a larger neutrality zone, as it would have been obliged to do in such case. [88] The letters demonstrate that the United States took pains not to prejudice any subsequent enlargement of its territorial belt and specifically conceded "that... three sea leagues has some authority in its favor."

It is perhaps interesting to trace the content of this vew to a statement published by Hamilton three months earlier. [89] Hamilton stated with respect to the range of national jurisdiction over the adjacent sea:

> "What this distance is remains a matter of some uncertainty, though it is an agreed principle that it at least extends to the utmost range of cannon shot, that is, not less than four miles. But most nations claim and exercise jurisdiction to a greater extent. Three leagues, or nine miles, seem to accord with the most approved rule, and would appear from Martin, a French author, to be that adopted by France, though Valin, another French author, states it at only two leagues, or six miles."

Obviously the reference to "Martin, a French author" refers to the German authority von Martens, whose above-discussed French Précis du droit des gens had been published only a few years before and acquired great esteem.

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[88] See with respect to this duty the statement by Hamilton in his "No Jacobin" articles, reprinted in 5 Works of Alexander Hamilton, 18 at 28 (ed. by Henry Cabot Lodge 1904).

[89] "No Jacobin", reprinted in 5 Works of Alexander Hamilton, 18, at 28 (ed. by Henry Cabot Lodge 1904).

(38) Actually the United States took active steps toward an extension of her territorial waters as a result of the controversy with Great Britain over the impressment of seamen. In 1806 the United States and Great Britain entered into negotiations for a Treaty of Amity, Commerce and Navigation, which was signed on December 31, 1806, but not ratified. [90] The American commissioners pursuant to instructions "suggested that a fair distance would be as far out 'as the well-defined path of the gulf stream,' " [91] an idea which had found favor inside the government at the latest the year before. [92] The commissioners justified this position on four grounds: [93]

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[90] For the text see Proceedings in the North Atlantic Coast Fisheries Arbitration, Sen.Doc.No. 870, 61st Cong., 3d Sess., Vol VI, Appendix to Counter Case of the United States, 18 (1912).

[91] Proceedings in the North Atlantic Coast Fisheries Arbitration, *op.cit.supra* note 90, Vol. VI, Counter Case of the United States, 71, and Vol. IV, Case of Great Britain, 9 (1912). For the text of the instructions by Secretary of State Madison to Commissioners Monroe and Pinkney, dated May 17, 1806, see 3 American State Papers, Foreign Relations, 119, 121 (1832).

[92] See the account of President Jefferson's statement to that effect during [then Senator] Adams' visit on November 30, 1805, 1 Memoirs of John Quincy Adams, 375 (ed. by Charles Francis Adams 1874).

[93] See the enumeration of the four grounds given by the American commissioners in the memorandum of November 17, 1806 written by [Sir John] Nicholl in reference to the demands. The memorandum is reproduced in 1 McNair, International Law Opinions 331 (1956). See also the letter from the British Commissioners to Lord Howick, Proceedings in the North Atlantic Coast Fisheries Arbitration, *op.cit.supra* note 90, Vol. V, Appendix to Case of Great Britain, 103 (1912).

(a) The extent of the territory;
(b) Its distance from other jurisdictions;
(c) The number of Headlands;
(d) The shelving nature of its coast.

The English resisted the demands after having been advised by the King's Advocate of the inconveniences which would flow from any "concession" to an extension. His memorandum stated:

> "It may be proper therefore to suggest what may be the inconveniences to be apprehended from the concession, in order to estimate the extent of the reciprocal demand to be founded on it.
>
> "1. The Inconvenience of extending any Rule beyond its Reason; which renders it indefinite and arbitrary. If the Right of territory is to extend to two Leagues, may not demand be set up to extend it to twenty or two hundred?
>
> "2. The Inconvenience of the precedent by which other Nations will be induced to apply for similar concessions. The extension of Territory in favour of the United States may possibly not be attended with considerable practical effects. But if the Rule became general, it might very naturally affect the interests of this country in the exercise of its maritime rights, when applied to the coasts of Europe, by protecting the commerce of the Enemy to the extent in many instances of entirely defeating the Power of Capture.
>
> "3. The undue advantage it would give to the enemy, not only extending their means of refuge, but by enabling them to capture British vessels, or British goods on board neutral and even American vessels, in situations where

> British Cruizers cannot capture the property of the enemy, nor even their Cruizers which may be there preying upon the Commerce of his Majesty's subjects, for I do not understand that other Nations have granted this extension to the Jurisdiction of the United States, so that while to Great Britain the Jurisdiction is to extend to two Leagues, to other Nations the distance of Cannon Shot will continue to be the Rule." [93a]

As a result only a carefully hedged extension of the maritime jurisdiction of Great Britain and the United States was agreed upon in Article XII of the Treaty [94] which the United States found unable to accept. [95]

(39) The positions taken by Great Britain and the United States in these negotiations show clearly that as of 1806 the United States did not accept the three-mile principle as a universal and inflexible rule of international law, while conversely Great Britain, as a consequence of having emerged as the principal naval power upon the victory at Trafalgar, from then on found it to be in her national interest to proclaim and insist on the three-mile principle as the established rule of international law, suffering exceptions only upon historic title.

(40) The conclusion must be reached therefore, that at least at that period there still was neither international agreement on the three-mile principle, nor was it accepted as binding by the United States.

No evidence can be found that a change of condi-

[93a] 1 McNair, International Law Opinions, 331 (1956).

[94] For text see *op.cit.supra* note 90.

[95] See letter by Mr. Madison to Messrs. Monroe and Pinkney, May 20, 1807, 3 American State Papers, Foreign Relations, 166 ff (1832).

tions had occurred between 1806 and 1836 when Texas enacted her statute. True, the United States joined Great Britain in a protest against an attempt by Russia in 1821 to bar all commercial vessels, other than Russian, from approaching within one hundred Italian miles from the northern coasts of Russia and Alaska. [96] But while the United States held the establishment of such exclusionary zones to be unwarranted under international law, Secretary of State John Quincy Adams placed his démarche merely on the ground that the prohibition went "beyond the ordinary distance to which territorial jurisdiction extends" [96a] without asserting a specific rule for such distance. In the whole course of negotiations terminating in an agreement of 1824, the United States refrained carefully from urging any definite number of miles. [97]

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[96] For the text of the imperial edict and the rules established for the limits of navigation and order of communication, along the coast of Eastern Siberia, the Northwestern Coast of America, and the Aleutian, Kurile, and other Islands, see 4 American State Papers, Foreign Relations, 857 (1834).

[96a] Note of February 25, 1822, reproduced in Proceedings of the Bering Fur-Seal Arbitration (Sen.Ex.Doc. 177, Part 2, 53d Cong., 2d Sess.) Appendix 132 ff., and 4 American State Papers, Foreign Relations, 861 (1834).

[97] For the contents of the diplomatic correspondence see Fur-Seal Arbitration, *op.cit.supra* note 96a, at 132-152; 4 American State Papers, Foreign Relations, 361-364 (1834); 5 American State Papers, Foreign Relations, 432-471 (1858).

PART III

Validity of the Texas Boundary Vis-à-vis the United States Resulting from Implied Acceptance

(41) Moreover, in the case of Texas the establishment of her boundary by the statute of 1836 is internationally valid and effective vis-à-vis the United States by reason of the conduct of the United States subsequent to the passage of said act. International law, like civil law in general, will neither condone, or give effect to, inconsistent actions by a state nor permit the disregard of acquired rights. The first principle is known as the prohibition against "*venire contra factum proprium*" (a doctrine similar to the common law doctrine of estoppel); the other principle is familiar as the protection of "*droits acquis*". Both rules are well established; as precedent for the first one the Eastern Greenland case,[98] the Minquires and Ecrehos case [98a] and Article 38c of the Statute of the International Court of Justice may be cited, while the second one inspired the reservation in favor of the legitimate interest of other states in the United States declaration of September 26, 1945, regarding the policy with respect to coastal fisheries in certain areas of the high seas. [99]

(42) During the whole period of the existence of the Republic of Texas the United States not only never protested against the sea boundary of Texas

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[98] P.C.I.J.Rep. Ser. A/B No. 53 (1933).
[98a] I. C. J. Reports, 1953, page 46.
[99] 59 Stat. 885 (1945).

established in the statute of 1836, but actively protected such boundary in the negotiations between the United States and Mexico terminating ultimately in the Treaty of Guadalupe-Hidalgo. [100] The Treaty of Guadalupe-Hidalgo stipulates in Article V,

> ". . . The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence . . ."

This draftsmanship was chosen for the particular reason to preserve the boundary established by Texas during her independence. This is amply borne out by the history of the Article in question.

In 1845 Secretary of State Buchanan furnished Mr. Slidell instructions regarding a possible settlement of the Mexican-United States dispute and specified the position of the United States. [101] He referred specifically to the boundary of Texas, which was then still an independent republic, and stated:

> ". . . Should the Mexican authorities prove unwilling to extend our boundary beyond the Del Norte, you are, in that event, instructed to offer to assume the payment of all just claims of citizens of the United States against Mexico, should she agree *that the line shall be established along the boundary defined by the act of Congress of*

[100] The pertinent documents are contained in Senate, Executive Doc. No. 52, 30th Congress, 1st Session, 1848.
[101] *Op.cit.supra* note 100, at 71 ff.

> *Texas, approved December* 19, 1836, to wit: beginning at 'the mouth of the Rio Grande; thence up the principal stream . . .' "

In 1847 when the negotiations had entered into an active stage, Mr. Buchanan instructed Mr. Trist, the Commissioner for the United States, with regard to his position and attached a proposed project for the treaty, [102] which provided in Article IV,

> ". . . The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from the land opposite the mouth of the Rio Grande . . ."

The government of Mexico in a counter-proposal for a treaty [103] likewise took account of the former Texan maritime boundary and proposed in Article IV,

> ". . . La línea divisoria entre las dos repúblicas comenzara en el golfo de México tres leguas fuerá de tierra, enfrente de la embocadura austral de la bahia de Corpus Christi; . . ."

It can be seen from this statement that while Mexico wanted to shift the Mexican-United States boundary towards the east, it acknowledged three leagues as the proper extent of the maritime boundary.

(43) It is also of interest that during the debate on the treaty in the Senate, one of the senators, while

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[102] *Op.cit.supra* note 100, at 85.

[103] *Op.cit.supra* note 100, at 375 (for Spanish text), and at 201 (for English text).

favoring another starting point of the Mexican-United States boundary, again relied on the three-leagues extent of the marine boundary. Mr. Davis of Mississippi proposed the insertion of the following Article. [104]

> ". . . The boundry line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite a point midway between the mouths of the river San Fernando and Santander . . ."

Again it can be seen that in the body, charged with advice and consent to the ratification of United States treaties, nobody at that time questioned the three-leagues provision with respect to the Gulf of Mexico, although with respect to the maritime boundary in the Pacific, the one-marine-league limit was recognized by terminating the bounday [105]

> " . . . 1 marine league due south of the southern-most point of port of San Diego."

(44) The foregoing negotiations, instructions and treaty stipulations show clearly that the United States at that time did not feel that the three-leagues boundary of Texas was internationally invalid and, on the contrary, tried to protect the same in her negotiations with Mexico. While it is true that upon protest on the part of Great Britain the government replied that the effect of the treaty was strictly *inter*

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[104] *Op.cit.supra* note 100, at 18.
[105] Treaty of Guadalupe-Hidalgo, Article V.

partes, certainly it cannot be denied that the United States for herself accepted the international validity of the Texas boundary.

Conclusions

On the basis of the foregoing exposition the following conclusions may and must be reached.

(1) The international validity of the maritime boundary on the critical dates between 1811 and 1845 depends on the absence of an international custom accepted as law prohibiting such boundary line.

(2) On the critical dates between 1811 and 1845 there was no general consent among the maritime powers as to a limitation of territorial waters to one league; on the contrary there existed respectable authority, evidenced by diplomatic correspondence and statements by authoritative text writers, expressly sanctioning a three- leagues limit.

(3) With respect to the Texas boundary in particular, the United States impliedly recognized such boundary both by failure to protest and by making it the basis of negotiations with Mexico and therefore is not now at liberty to question the validity on grounds of international law.

EXHIBIT III

Memorandum on Joint Brief for Gulf States †

By C. John Colombos, Q.C., LL.D.*

1. I propose dealing in the present Memorandum with the main points of law and of fact arising out of the joint reply of the States bordering on the Gulf of Mexico, in so far as they are common to all five States.

2. The principal issue which arises for decision in the present action relates to the purport and construction to be given by this Court to the terms of the Submerged Lands Act of 1953 which granted to the States certain property rights with respect to lands beneath navigable waters and the natural resources within such lands and waters within the boundaries of the respective States in the Gulf of Mexico, as they

† The following memorandum was received too late to be incorporated by reference in the body of the brief. It demonstrates that, even under the strict British view, the rights of the Gulf Coast States to the submerged lands within their historic boundaries three leagues from coast are not in conflict with any principle of international law.

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existed at the time each State "became a member of the Union, or as heretofore approved by the Congress", but "in no event extending more than three leagues into the Gulf of Mexico."

3. The material date for determining these boundaries is accordingly the time when each of the five States became a member of the Union, viz. between 1812 and 1868, and the contention of the States is that at that crucial date, their maritime boundaries extended into the Gulf of Mexico at least three leagues from their coasts. On the other hand, the contention of the United States is that such boundaries "have never had any validity under international law" (at p. 104 of the Government brief).

4. As is pointed out in my separate Memorandum for the State of Texas, there has never been any unanimity on the breadth of the territorial sea. It will be sufficient to add here to the authorities there quoted, the opinion expressed by one of the leading authorities on international law, Hall, writing in 1880, who states that "it may be doubted, in view of the very diverse opinions which have been held until lately as to the extent to which marginal seas may be appropriated, of the lateness of the time at which much more extensive claims have been fully abandoned, and of the absence of cases in which the breadth of territorial waters has come into international question, whether the three-mile limit has ever been unequivocally settled." *International Law* (1880) pp. 126-127.

5. But even on the assumption that the three-mile extent of territorial waters has now acquired the authority of a general rule of international law (which is disputed), that rule suffers exceptions based on historic or prescriptive rights, or the special peculiarities of a coast. (See the Judgment of the International Court of Justice in: *The Fisheries Case*, I.C.J., Reports, 1951, 116).

6. This is particularly the case with the legal regime applicable to bays — such as the Gulf of Mexico — where quite different considerations arise from the ordinary rules generally governing the breadth of territorial waters in the open sea. The United States has itself accepted this three-league limit of territorial boundaries in the Gulf of Mexico in its various treaties with Mexico, and notably in the treaties of Guadalupe-Hidalgo of 1848 and of Gadsden of 1853, which fixed the boundary line at "nine nautical miles from land outside the mouth of the Rio Grande," and which was repeated in several subsequent treaties concluded by Mexico in the second half of the nineteenth century.

7. It is thus clear that a special rule of maritime boundaries has been recognised in the Gulf of Mexico based both on historic grounds covering a period of over a century, and the particular characteristics of its coasts.

8. Applied to the Gulf of Mexico, these characteristics relate to special and exceptional factors which justified the reasonableness of a greater breadth than in either the Atlantic or Pacific coasts of the

United States at the material date. Briefly stated these factors mainly concerned (a) the shallowness of the water along the Gulf coast, which rendered necessary an extended limit of maritime boundaries both for purposes of defence, and the suppression of smuggling; (b) the limited use of these waters by international traffic; (c) the absence of large stocks of fish as compared to the eastern and western coast of the United States; and (d) the custom prevalent, at the material dates, of expressing maritime boundaries in leagues rather than miles.

9. Considered, therefore, in the light of these factors the fixing of a three-league seaward boundary in the Gulf of Mexico appears reasonable in the circumstances existing at the relevant dates between 1812 and 1868.

Custom as a Source of International Law.

11. The question of the ascertainment of prescriptive or historic rights is closely bound with the rules of customary international law, which constitutes an important source of that law. As Chief Justice Marshall said in *United States v. Percheman:* "the usage of nations becomes law and that which is an established rule of practice is a rule of law." 7 Peters 51 (1833). The British House of Lords has similarly affirmed the importance of the general acceptance by civilised nations as a rule of international conduct, or practice. *Compania Naviera Vascongado v. Cristina* (1938) Appeal Cases at p. 497.

12. The same principle is reflected in Article 38 of the Statute of the International Court of Justice which describes custom as evidence of "a general practice, established as law".

13. The existence of this customary rule of international law may be established by its general recognition by the majority of States, without it being necessary to prove in every instance, that all States have invariably accepted the rule as obligatory. Brierly, *The Law of Nations*, 5th Edition, (1955), p. 62. It should be observed in this connection that special authority attaches to the usages of particular States in certain departments; so that no new maritime usage could well be regarded as generally binding, independently of agreement, unless it has been followed by the chief maritime Powers. Pitt Cobbett, *Cases on International Law*, 6th Edition (1947), vol. I. *Peace*, p. 9.

14. This Court in its leading judgment of *The Paquete Habana*, 175 U.S. 677 (1899), vindicated the doctrine of "the customs and usages of civilized Nations" as being an important part of international law.

15. The same consideration underlies the reference by the International Court of Justice in the *Fisheries Case* to "certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by long usage," and, again, to "rights founded on the vital needs of the population and attested by very ancient and peace-

ful usage" *I.C.J. Reports*, (1951), at pp. 133 and 142.

16. This is particularly the case when the rules applicable to Bays come into consideration. The International Law Association whilst generally favouring the three-mile limit of territorial waters, approved at its *Vienna Conference* in 1926, the principle that in the case of bays "territorial waters shall follow the sinuosities of the Coast unless an occupation or established usage generally recognized by Nations has sanctioned a greater limit." Article 7 of the Draft Convention on the "*Laws of Maritime Jurisdiction in time of peace*", 34th Report, p. 102. Similarly, the Institute of International Law agreed at its *Stockholm Conference* in 1928 that for bays the territorial sea "is measured from a straight line drawn across the place nearest the opening of the sea where the distance between the two sides does not exceed ten nautical miles, unless an international usage has sanctioned a greater length." *Annuaire*, vol. 34, pp. 755-756.

17. In my opinion, therefore, both on account of the special characteristics of the Gulf of Mexico and on the ground of prescriptive and historic rights, the defendant States' claims to a three-league maritime boundary is valid and enforceable.

18. It should be added that, irrespective of the States' titles to this boundary, as above outlined, the United States' right to explore and exploit the natural resources of the continental shelf adjacent to its coasts, both under the *President's Proclamation*

of February 28, 1945, and the *Convention on "The Continental Shelf"*, adopted by the *Conference on "The Law of the Sea"* at Geneva, in April 1958, is complete and exclusive, and does not, in any way, depend on the maritime boundaries of the States in the Gulf of Mexico. Throughout its terms the transfer of property rights granted to the States by the Submerged Lands Act of 1953 are based "within the State boundaries" and not on the location of the United States "national maritime boundary." The United States, had, in fact, recognised and acquiesced in the States' maritime boundaries at the time they joined the Union. These boundaries were known to the United States Department of State and to the Congress at that crucial time, and yet during a period covering over a century, the United States Government never protested or raised any objection to the States' historic boundaries.

19. This course of conduct on the part of the Government raises the question of the doctrine of estoppel which, in my opinion, is applicable to the issues in dispute in the present action.

The Doctrine of Estoppel.

20. A further ground on which the claim of the States may be based is the doctrine of estoppel, which is valid both under municipal, inter-state and international law.

21. In the case of *Canada and Dominion Sugar Co. v. Canadian National (West Indies) Steamships*, (1947) A. C. 46, the Judicial Committee of the

British Privy Council, held that "the whole concept of estoppel is more correctly viewed as a substantive rule of law," and quoted with approval Sir Frederic Pollock's description of the doctrine of estoppel as "a simple and wholly untechnical conception, perhaps the most powerful and flexible instrument to be found in any system of Court jurisprudence" *(ibid,* at pp. 55-56). As Judge Lauterpacht stated in his book on *Private Law Sources & Analogies of International Law,* "the principle underlying estoppel is recognized by all systems of private law, not only with regard to estoppel by record, but also, under different names, with regard to estoppel by conduct and by deed" (at p. 204).

22. The growing reference which is frequently made to the doctrine of estoppel, both by municipal and international tribunals, shows the importance of the doctrine, and its close relation to the precepts of good faith, and to the maxim *"allegans contrarium non est audiendus."*

23. The International Court of Justice has also recognised, on several occasions, the operation of the principle of estoppel. Although it referred to it as a principle known in "Anglo-Saxon" law, it considered it as being also a "general principle of law". Thus the Court applied this doctrine in *The Eastern Greenland Case,* where it pointed out that the recognition by Norway of the whole of Greenland as Danish "debarred her from contesting Danish sovereignty over this territory" (Series A/B, No. 53 (1933) at p. 69).

24. In the course of the advisory proceedings before the Court concerning the *Interpretation of the Peace Treaties with Bulgaria, Hungary & Roumania*, the Governments of both the United States and Great Britain filed written Statements incorporating arguments based on estoppel (I.C.J. *Pleadings*, pp. 190-191).

25. In the *Nottebohm Case* before the same Court, the Liechtenstein Memorial pointed out that the doctrine of estoppel is similar in both international and municipal law and is essentially grounded on considerations of good faith and honest conduct in the relations of States and individuals alike" (I.C.J. *Pleadings*, vol. 1, p. 42). The action of Liechtenstein failed because it could not produce adequate evidence, but the Court impliedly admitted the validity of the doctrine of estoppel in its statement that Guatemala had not recognized Liechtenstein's title to exercise protection in favour of *Nottenbohm* and was not thus "precluded from denying such a title" (I.C.J *Reports*, (1955) p. 19).

26. The most important forms of the doctrine in so far as relevant to the present case, may be summarised under the three following headings:

(1) *Estoppel based on previous recognition.*

27. It could in my opinion, be argued on behalf of the States that the Government had, either expressly or by implication, recognised the States' claim to their "historic" boundaries. This contention may be illustrated by the United States pleadings in

the *Shufeldt Case*, which were based on the argument that Guatemala, having for six years recognised the validity of the claimant's contract and having allowed Schufeldt to continue to spend money on the concession, was precluded from denying its validity. The Arbitrator held in his award, that this argument was "sound" (1930) Report in vol. 2, U.N.R. A.A., p. 1079 at p. 1094.

(2) *Estoppel based on conduct.*

28. The doctrine of estoppel operates in this case by preventing a party from taking up a position in relation to a legal claim which is clearly inconsistent with its previous conduct in the matter. The question was carefully considered by the Law Officer of the British Crown in relation to the legality of the proposed annexation of territory by the Transvaal Republic, and he arrived at the conclusion that by reason of the recognition of the Boer settlement beyond the river Vaal, "Her Majesty's Government was precluded from disputing any title which the Republic might have acquired to the north of the river" (*Report of the Queen's Advocate to Lord Stanley*, Secretary of State for Foreign Affairs, dated 29th October, 1868, Foreign Office Records: *Africa (South)*.). Similarly, when in 1902 the British Foreign Secretary referred to the Law Officers of the Crown the question whether Persia could plead ignorance of the effect of an Egyptian Firman of 1873, their conclusion was that it would have been open to Persia to make a declaration relieving herself from her tariff obligations towards Egypt when

the Firman was first brought to her notice, but that "it is not competent to her to revert to an attitude of protest after having entered into negotiations with Egypt which were inconsistent with her plea of ignorance" (*Report* dated 17th November, 1902, *F.O. Records: Egypt.*)

29. A similar conclusion was reached in 1874 with regard to the Spanish claims to sovereignty over the Sulu Archipelago. The Report of the Law Officers of the Crown states that "whilst on the one hand it is quite true that Her Majesty's Government has never expressly recognised the validity of the claims of Spain, it is, on the other hand, equally true that Her Majesty's Government, with a full knowledge of all the facts, has stood by and allowed the claims to be acted upon, and, in our opinion, H. M.'s Government would not now be justified in further remonstrating against such claims" (*Foreign Office Records, 1874—Spain*).

30. A further instance of this principle is found in the dispute between the United States and Great Britain regarding the *Title to Islands in Passamaquoddy Bay.* The concluding passage of the British Case points out that, in view of the silence of the United States with regard to the Island of Grand Mana for some 23 years, "it may admit of some doubt whether this profound silence ought not now to preclude all further claim to it on their part", and this doubt was strengthened by the principle laid down by the Agent for the United States in his argument before the Commissioners under Article IV of the *Treaty of Ghent* in which he contended that,

"had the State of Massachusetts remained silent spectators of the improvements made upon the British Settlement on territory claimed by the United States, that would have indicated that the State of Massachusetts had no claim to the territory" (quoted in *Moore's International Adjudications* (Modern Series), vol. 6, p. 195.)

(3) *Estoppel based on acquiescence.*

31. This form of estoppel is founded on conduct coupled with a knowledge of legal rights or facts. It has been applied where a person, knowing his own title to a specified property, has suffered another to expend money on the property on the supposition that it was his own: (*Ramsden v. Dyson* (1886) L.R. 1, House of Lords, 129 at p. 140). It has rightly, in my view, been argued that "like recognition, acquiescence produces an estoppel and like extinctive prescription, acquiescence provides an alternative to recognition and, likewise, creates an estoppel" (Schwarzenberger, *The Fundamental Principles of International Law*, in *Hague Recueil*, vol 87 (1955), pp. 195 at pp. 256 & 259).

32. In the *Island of Palmas* arbitration, the arbitrator relied on the doctrine of estoppel in holding that "the acquiescence of Spain in the situation created after the establishment of the Dutch position in Sangi would deprive her and her successors of the possibility of still invoking conventional rights at the present time" (*Reports of the Permanent Court*

of Arbitration, at *The Hague, Award*, No. 18 of 1929.)

33. A similar argument was invoked in 1884 in a letter from Earl Granville, the then British Foreign Secretary, to Musurus Pacha, Turkish Ambassador to the Court of St. James, with reference to the rights of a British Shipping Company to operate her vessels on the Tigris and Euphrates rivers. As Earl Granville said: "the Company had enjoyed that privilege ever since 1861 with the knowledge and acquiescence of the Porte, the absence of protest during that period showing that the attitude of the Porte had been one of acquiescence in a claim of right on the faith of which the Company had made large capital investments. Her Majesty's Government, therefore, consider that the attitude of the Porte during the last twenty-two years debars them from now disputing the validity of the rights claimed and exercised by the Company under the Vizirial letter of 1861, and that they are entitled to insist on the *status quo* of the Company being maintained" (*Foreign Office Records*, May 28, 1884, *Turkey*).

34. A still further instance of this rule is traced in correspondence exchanged in 1899 between the United States and Great Britain regarding the boundary between Venezuela and British Guiana. The United States Secretary of State in dismissing the British claims to the boundary, concluded with the following passage: "If Great Britain's assertion of jurisdiction, on the faith of which her subjects made settlements on territory subsequently as-

certained to be Venezuelan, could be shown to have been in any way assented to or acquiesced in by Venezuela, the latter Power might be held to be concluded and to be estopped from setting up any title to such settlements" (Printed in the *British Command Paper* No. 9501 (1899) *Venezuelan Argument*, p. 63).

35. As applied to the case of the States in the present action, the above authorities clearly prove that by reason of the recognition, acquiescence, and conduct of the United States for a period extending over a century, the Government is estopped from denying the rights of the States to their historic boundaries.

Further in my opinion, the Government's contention that a maritime boundary exceeding three miles in extent is contrary to the United States "national foreign policy", or to the rules of international law, cannot be supported.

36. The relevant question which falls to be decided in the present action relates to the interpretation to be given by this Court to the Submerged Lands Act, a matter of domestic concern, substantially governed by the provisions of the United States Constitution. The question of the apportionment of the national maritime boundaries, as between the Federal Government and the State is no concern of international law. Indeed, if it were to be contended that the right of the States to a three-league maritime boundary when claimed by the States, is con-

trary to the rules of international law, it would be equally so when claimed by the Federal Government.

37. It would be easy to imagine the dire consequences which would flow from such a contention. They would imply that the President's Proclamation of the 28th September, 1945, claiming jurisdiction and control over "the natural resources of the subsoil and sea-bed of the continental shelf" is contrary to the principles of international law. They would also stultify the American claims to the continental shelf as upheld by the American delegates both before the International Law Commission of the United Nations and the Geneva Conference on "The Law of the Sea" of February-April 1958.

38. It is sufficient to pause here for a minute in order to realise that the Government's arguments on this point are wholly untenable. Moreover, they are inconsistent with the Government's express admissions. Thus at p. 250 of its Brief, the Government states that "since the United States claims, as against other nations, the right to control exploitation of the continental shelf, it could delegate to the States any portion of such control without regard to the location of the State boundaries." Again at p. 148 of its Brief, the Government admits that "it is perfectly true that the United States claims control over the resources of the seabed beyond its maritime boundary, so far as the edge of the continental shelf, and that whether such control is to be exercised by the National Government or by the States, is a matter

of domestic distribution of powers, which does not concern other nations."

39. Considered in their obvious implications, these admissions make it impossible for the Government to claim for itself rights which it denies to the States on the ground that they are contrary to the "national foreign policy," or to the rules of international law.

Conclusion

40. In my opinion, it clearly results from the consideration of all relevant points of law and of fact applicable to the present issue, that the five States bordering on the Gulf of Mexico have established their right of ownership, control and jurisdiction of the natural resources underlying that portion of the Gulf of Mexico within their historic boundaries, three leagues from shore, and that such right does not offend any principle of the United States "national foreign policy" or any principle of international law.

41. I am further of the opinion that no conflict results under either of these principles in giving full effect to the Submerged Lands Act of 1953 which granted to the States title to and ownership of the lands beneath navigable waters within their historic boundaries, together with the right and power to manage, administer, lease, develop and use the said lands and natural resources.

C. John Colombos

Temple:
31st July, 1958.

FILED
AUG 13 19
JOHN T. KEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 10, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

BRIEF OF THE STATE OF TEXAS

WILL WILSON
Attorney General of Texas
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Yingling, Raymond T., "Geneva Conference on the Law of the Sea," 2 A. B. A. International and Comparative Law Bulletin, No. 3, p. 10 (July, 1958) 138-39, 146

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 10, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

BRIEF OF THE STATE OF TEXAS

Preliminary Statement

The development of the suit is set forth in plaintiff's statement of the case.

The Brief of the State of Texas is responsive to Points I and III and to all other contentions made by the United States against Texas.

Nature of the Rights in Controversy

The Congress, claiming the subsoil and seabed of the entire Continental Shelf for the United States, conveyed a portion to Texas and the other Coastal

States. This distance was measured in the case of Texas by the three-league boundary line "as it existed at the time such State become a member of the Union." [1] The remainder of the Continental Shelf off Texas was placed under Federal authority to be administered by the Secretary of the Interior.[2]

The Submerged Lands Act and this controversy relate only to submerged lands and resources therein as distinguished from the overlying waters. The Government has sued only for "the lands, minerals, and other things *underlying* the Gulf of Mexico, etc."[3] As will be shown, all national powers related to navigation, commerce, national defense, and international affairs with respect to overlying waters were specifically retained and reserved to the Federal Government in Section 6 of the Act.

The question in this case is limited to the location of the Texas boundary in the Gulf of Mexico at the

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[1] Submerged Lands Act, Section 2(a) (b). (67 Stat. 29, Public Law 31, Ch. 65 [1953]). In the Senate, the language of S. J. R. 13 was substituted for the language of H. R. 4198 when the bill was finally passed by the Senate. 99 Cong. Rec., 4487-88. Title III of H. R. 4198 contained the provisions of the Outer Continental Shelf Lands Act and it was dropped by the Senate and later passed as a separate act by the same Congress.

[2] Outer Continental Shelf Lands Act, which provided: "The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the Outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State." (67 Stat. 462 *et seq*, Public Law 212, Ch. 345, August 7, 1953).

[3] Amended Complaint in *U. S. v. Louisiana, et al*, p. 19.

TEXAS

TEXAS
Austin
Houston
Ft. San Jacinto
Spindletop Salt Dome Field
Gulf Coast (1543—1903)

time Texas became a member of the Union, or as subsequently approved by Congress before the Submerged Lands Act. A judgment upon the issue pleaded in this case will not affect overlying waters.

This Court as the Government's Brief states, refers to the rights in controversy as "property rights".[4] We shall, therefore, refer to them in the same way. These rights are entirely separate from rights in the overlying waters, which are not involved in this case.

The Submerged Lands Act[5] and the Outer Continental Shelf Lands Act[6] were considered by the same congressional committees, were enacted by the same Congress, were signed by the same President, and are in pari materia in that the Shelf Act by its specific terms (Section 2(a)) has application only to lands outside the States' historic boundaries as defined in Section 2 of the Submerged Lands Act.

The red line on the map opposite this page (which is an approximation) delineates roughly the area within the three-league boundary and the federally-owned lands extending out to the edge of the Continental Shelf.

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[4] See footnote 2 at p. 30 of the Government's Brief, in which it is said: "In the present brief, we take it for granted that the Submerged Lands Act is to be considered a grant of Federal *property rights* to the States. *Alabama v. Texas*, 347 U. S. 272."

[5] Hereafter referred to as "the Act".

[6] Hereafter referred to as "the Shelf Act".

Status of the Case

There are motions pending by Texas to take evidence and for severance. Obviously, from the Court's having set the case for argument on the United States' Motion for Judgment, which is in the nature of a Motion for Summary Judgment, these motions have not been acted upon and presumably will not be until the Government's Motion is decided.

Texas does not waive its right to adduce evidence or for a severance.

> "The Court in original actions, passing as it does upon controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing the full development of the facts." *United States v. Texas*, 399 U. S. 707, 715.

Of necessity much of the material cited or quoted in this Brief will consist of works of history, newspaper accounts, laws of the Republic of Texas, unpublished diplomatic correspondence, affidavits, and the like. If this Court does not take judicial notice of this material, or if a fact issue is raised, then it is essential to accord Texas a full trial on the merits with the introduction of proof, rather than to decide a case of this importance and magnitude on the bare skeleton of pleadings.

Since the five Gulf Coastal States are presenting a Joint Brief on points common to all States, this Brief, in the main, will be confined to the affirmative presentation of the Texas case, on which Texas is entitled to judgment regardless of the decision as to the other defendants.

Summary of Argument

The question before the Court is solely one of domestic law and is entirely limited to property rights in the seabed and subsoil out to Texas' historic three-league boundary. There is not in any manner involved in this case any question pertaining to the overlying waters, or to foreign policy, or international law.

The Submerged Lands Act grants rights to a State to its boundary beyond three geographical miles (1) where such a boundary existed at the time the State became a member of the Union, or (2) where such a boundary was approved by Congress before the passage of the Act.

Historic boundaries were carefully defined in Section 2, and the last sentence of Section 4 is definitive of the degree of proof required for Texas to establish its case. Under the Act, all that Texas has to do is to show as a fact that it had a law defining its three-league seaward boundary at the time it became a member of the Union, or that Congress subsequently approved that boundary. Section 3 effects a grant of subsoil proprietary rights out to and within Texas' three-league seaward boundary.

The Republic of Texas, as provided by its Boundary Act of 1836, had a boundary at three-leagues in the Gulf of Mexico which existed at the time Texas became a member of the Union. This historic three-league boundary is the measure of the transfer of proprietary rights made by the United States to Texas under the Submerged Lands Act. This interpretation is supported by appropriate ev-

idence of Congressional and Presidential intent before and during the passage of the Submerged Lands Act and by contemporaneous construction of the Act by the President and other Federal officials charged with its administration.

Texas' historic three-league boundary has been approved many times by Congress.

The Submerged Lands Act contains no requirement that the Republic of Texas' three-league historic boundary must have been recognized in international law, or used and occupied for a "prescriptive period," or that the United States during the Republic's history must have recognized such three-league boundary.

However, Texas' three-league boundary was not in conflict with international law at the relevant period and was one which the independent Republic had a right to declare. The Texas Republic did in fact maintain sovereignty, jurisdiction, and control out to its historic boundary. The United States recognized and acquiesced in that boundary prior to and at the time Texas entered the Union. The independent Republic of Texas was recognized by the principal maritime powers of the world, which were aware of its seaward boundary, and no nation protested that boundary.

The court need not decide the validity of the Texas three-league boundary in 1836 when considered as the limit of "territorial waters," because that boundary in any event was valid as a limit of Texas jurisdiction and control of a portion of the continental shelf. As such it was a boundary which

"existed" at the time Texas became a member of the Union.

The United States has a three-league boundary in the Gulf of Mexico, adopted from the Republic of Texas, carried forward into the Treaty of Guadalupe Hidalgo between the United States and Mexico in 1848 and confirmed in subsequent treaties and international boundary conventions. This national boundary exists without reference to the extent of territorial waters. It is consistent with and supports the validity of the Texan three-league boundary.

This Court has upheld the Act and the grant to Texas in *Alabama v. Texas*, 347 U.S. 272. Under *stare decisis* the cause asserted against Texas is foreclosed.

Argument

I.

THE QUESTION BEFORE THE COURT IS SOLELY ONE OF DOMESTIC LAW AND IS ENTIRELY LIMITED TO PROPERTY RIGHTS IN THE SEABED AND SUBSOIL. IT DOES NOT IN ANY MANNER INVOLVE THE OVERLYING WATERS, OR FOREIGN POLICY, OR INTERNATIONAL LAW.

A. THE GOVERNMENT'S CONCESSIONS.

The United States concedes that the Act transferred to Texas property rights three miles from low water mark (Amended Complaint, p. 8) but contends, contrary to the Act and Congressional intent, that the Act did not grant to Texas property rights as far out as Texas' three-marine-league seaward boundary.

The Government concedes that Texas provided by statute for a three-league seaward boundary:

> "There is no doubt, of course, that the Republic of Texas made statutory claim to a marginal belt three leagues wide. The Act to Define the Boundaries of the Republic of Texas, approved December 19, 1836,[7] was explicit on that point." (Government's Brief, p. 188).

The Government concedes that the division of property rights in the continental shelf is a domestic question:

> "It is perfectly true that the United States claims control over the resources of the seabed beyond its maritime boundary, as far as the edge of the Continental Shelf, and that whether such control is to be exercised by the National Government or by the States is a matter of domestic distribution of powers which does not concern other nations." (Government's Brief, p. 148).

> "Since the United States claims, as against other nations, the right to control exploitation of the Continental Shelf, it could delegate to the States any portion of such control without regard to the location of State boundaries." (Government's Brief, p. 250).

Despite these admissions the Government still takes the irreconcilable position[8] that "although the present controversy is wholly domestic, the principal issue must be decided by reference to national foreign policy."

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[7] 1 Laws, Republic of Texas 133.

[8] Government's Brief, p. 16. Hereafter Government's Brief will be referred to as Gov't. Br.

B. SINCE THE CONTROVERSY IS WHOLLY DOMESTIC, THE ISSUES SHOULD BE DECIDED WITHOUT REFERENCE TO FOREIGN POLICY OR INTERNATIONAL LAW.

It is inconceivable that a controversy could be "wholly domestic", and therefore determinable by domestic law, but that in deciding the controversy the Court must ignore domestic law and make a decision upon the basis of changeable "foreign policy" or upon the nebulous, unsettled concepts of "international law".

In the first place, Congress is not obliged to adopt any or all of the principles of international law which may be acceptable to the Family of Nations.

> "*International law is not in itself binding upon Congress,* and treaties stand upon no higher plane than statutes of the United States." *United States v. Siem*, 299 Fed. 582.

Accord: *Reid v. Covert*, 354 U.S. 1, 18.

Since the Congress is not bound by the uncertain and indefinite principles of international law, and can even modify existing treaties at will,[10] then cer-

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[9] Emphasis throughout this Brief is supplied unless otherwise indicated.

[10] *Moser v. United States*, 341 U.S. 41, 45; *Clark v. Allen*, 331 U.S. 503, 508-509; *Pigeon River Co. v. Cox*, 291 U.S. 138, 160; *Head Money Cases*, 112 U.S. 580, 597-599; *Chung Yim v. United States*, 78 F. 2d 43; cert. den. 296 U.S. 627; *Tetti v. Consolidated Coal Co. of Md.*, 217 Fed. 443, (N.D. N.Y.); *State of Arizona ex rel Arizona State Board of Public Welfare v. Hobby*, 221 F. 2d 498 (D.C. Cir.);

tainly it is not bound by declarations of the Secretary of State as to international law regarding the extent of the territorial sea or the nation's boundaries. As a matter of fact, Secretary Dulles in his letter (reprinted Gov't. Br. p. 342) is very careful to restrict his statements to the "*territorial waters*" concept and he *does not speak of the nation's boundaries.*

Of course, the fixing of State boundaries is not a function committed to the Secretary of State. Even Congress cannot change States' boundaries "without the consent of the legislatures of the States concerned as well as of the Congress." (U.S. Const., Art. IV, sec. 3).[11] Also, Congress alone can regulate commerce with foreign nations and define offenses against the "Law of Nations". (U.S. Const., Art. I, sec. 8, cl. 10). If Congress can "define" offenses against the "Law of Nations" it alone, so far as the United States is concerned, can determine what the "Law of Nations" is in making its definitions[12] and, of course, the Secretary of State, a non-constitutional officer, must conform thereto.

Apparently the Government ignores, or at least does not give complete effect to, the Truman Proclamation, the implementing Outer Shelf Act, or the Submerged Lands Act itself as applying only to subsoil and seabed. In each instance the character of,

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Hing Lowe v. United States, 230 F. 2d 644 (9th Cir.); *Ballester Pons v. United States*, 220 F. 2d 99, cert. den. 350 U.S. 830; *United States v. 85,237 Acres of Land More or Less in Zapata County, Texas*, 157 F. Supp. 150, (S.D. Tex.).

[11] *Louisiana v. Mississippi*, 202 U.S. 40; *State v. Muncie Pulp Co.*, 110 Tenn. 47, 104 S.W. 437.

[12] 1 Hackworth, *Digest of International Law* 25-27.

and rights in, the overlying waters were left undisturbed. The Act applies to State historic boundaries only for the purpose of marking the outer limit of the transfer of subsoil and seabed proprietorship. The "territorial waters" concept, attempted to be interjected, is not relevant, and was not offended by either Act, as is apparent from the congressional hearings and floor debates, as well as Section 6 of the Act and Section 2(b) of the Outer Shelf Act.

C. CONGRESS, UPON ADVICE FROM THE STATE AND JUSTICE DEPARTMENTS, DREW THE ACT SO AS NOT TO CONFLICT WITH NATIONAL FOREIGN POLICY.

During the hearings on the Act Congress was completely aware of the identical assertions and contentions now made by the Government in its Brief. Congressional committees heard the testimony of the Attorney General and a legal representative of the State Department that the Act would not conflict with the conduct of the nation's foreign policy or international law, and in line with their testimony, and to assure that the Act would not do so, Congress incorporated Section 6 into the Act.[13]

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[13] Section 6 provides, in part, as follows:

"Powers retained by the United States—(A) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by Section 3 of this Act..."

1. Testimony—Justice Department.

During Attorney General Brownell's testimony before the Senate Committee,[14] Senator Long asked:

> "You do not see any reason, do you, why the Federal Government could not, if it wanted to, turn this marginal belt over to the States?"

The Attorney General responded:

> "We think there is no inconsistency by the Federal Goverment's continuing to exercise its prerogatives in the field of national defense and navigation and international affairs, and still granting authority to the states to administer the natural resources in the off-shore properties." [14a]
>
> * * *
>
> "I think they specifically mentioned those three things—navigation, national defense, and *foreign affairs*—as being reserved exclusively to the Federal Government." [14b]

Former Solicitor General Perlman, who was an opponent of the Bill, stated:

> "I think — and I have so stated here before congressional committees — that the Constitution gives Congress the right to dispose of the property of the United States." [14c]

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[14] Hearings on S. J. Res. 13, Before the Senate Committee on Interior and Insular Affairs, 83rd Congress, 1st Sess., 938 (1953).

[14a] *Ibid.*

[14b] *Id.*, p. 939.

[14c] *Id.*, p. 684.

Senator Daniel asked Mr. Perlman whether, if only proprietary rights were granted to the states, "in your opinion is that not perfectly constitutional?" Mr. Perlman replied:

> "I have said before — I will repeat it — that in my opinion, Congress has the right to dispose of the property of the United States, and it has the right to take these mineral resources from the bed of the sea. I think it can delegate others to take them and to enjoy them. I do think that."
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> * * *
>
> "I think that they [referring to Congress] can delegate it to anybody, and they certainly could delegate it to a state sovereignty. If it can make leases with private corporations, it certainly can give the authority to the states . . ." [14d]

2. Testimony—State Department.

At the same Committee hearing, Mr. Jack B. Tate, Deputy Legal Adviser of the State Department, appeared for the State Department and presented its official position. He said:

> "I appear at the request of the Committee to testify on questions *concerning the international relations of the United States* which have arisen in the course of the hearings of this committee *on control and development of mineral resources off the coast of the United States.* I should like to make it clear at the outset that the Department is not charged with the responsibility concerning the issue of Federal versus State owner-

[14d] *Id.*, p. 706.

ship or control. *It is concerned solely with the effect which the legislation might have upon the conduct of foreign affairs.*" [14e]

* * *

"The Department believes that the grant by the Federal Government of rights to explore and develop the mineral resources of the Continental Shelf off the coasts of the United States *can be achieved within the framework of the traditional international position.*" [14f]

* * *

"As I said to Senator Daniel awhile ago, I do not think the State Department has attempted to pass on the Texas claim. We consider as that letter says, *that that is a matter of domestic law which is not within the province of the State Department.*" [14g]

Senator Jackson asked the following question:

"[If] we attempt to grant authority and jurisdiction beyond the three mile limit we might find ourselves in violation of our own treaties entered into by the Government?" [14h]

Mr. Tate replied:

"It depends upon what authority and jurisdiction you should grant. *We have taken the position that whether this exploitation of the seabed is done by the Federal Government or the State governments is not a matter that is of*

[14e] *Id.*, p. 1051.
[14f] *Id.*, p. 1053.
[14g] *Id.*, p. 1061.
[14h] *Id.*, p. 1067.

international concern, nor is it a matter that, as far as I know, would conflict with any of our treaty obligations."

The following interchange occurred:

"Senator Long. As I understand your previous answer, it is your feeling that with regard to the taking of natural resources from the land beneath the surface on the Continental Shelf, that that matter is one of *domestic decision* insofar as the Government is concerned?

"Mr. Tate. That is right.

"Senator Long. In other words, if this Government should in its wisdom decide to do so, it may permit the States to exercise some jurisdiction in regard to that? If the Government decides not to, it may exclude the States from exercising jurisdiction in that regard?

"Mr. Tate. I think the rights can be distributed between the Federal Government and the States in any way at all and would not impinge upon our relations with other States." (Obviously referring to foreign nations).

"Senator Long. In other words, it is of no concern to any *foreign power* whether the oil taken beyond the three-mile limit goes all to the Federal Government, all to the States, or on some formula that permits sharing between the two?

"Mr. Tate. That is correct.

"Senator Long. In other words, it is a matter for Congress and the Executive to decide?

"Mr. Tate. That is correct.

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[141] *Id.*, p. 1070.

As to exploitation, Mr. Tate stated that if Congress decides that exploitation should be done by the States, "the United States might do . . . the same for all States or differently for different States." [14]

Senator Cordon, who reported the bill as acting chairman of the Committee on Interior and Insular Affairs, on behalf of himself and other co-authors of the bill, explained:

> "In collaboration with other coauthors of the resolution and with members of the Committee on Interior and Insular Affairs, I have prepared a detailed statement showing that the true intent and effect of Senate Joint Resolution 13 are to establish a policy which is clearly within the authority of the Congress of the United States. In order that every Member of the Senate may have an opportunity to consider this statement prior to a final vote on the passage of the resolution, I ask unanimous consent that it be inserted in the Record at this point in my remarks.
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> * * *
>
> "Therefore, regardless of how the marginal belt and its lands and resources were acquired in the first instance, they are now a part of the territory of the United States the same as its land territory, and the Constitution and domestic laws are applicable as between the Federal Government and the States or individual citizens.
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> * * *
>
> "If any doubt remains on this question of whether that part of the marginal belt included

[14] *Id.*, p. 1068.

within the definition of 'lands beneath navigable waters' in Senate Joint Resolution 13 is a part of the territory of the United States and subject to the authority of Congress, the doubt will be removed by the terms of this joint resolution. No one will question the right of the Congress to declare the territorial extent of the jurisdiction of our Nation. By its definition of 'lands beneath navigable waters' Senate Joint Resolution 13 recognizes that the area within the 3-mile limit *or within such greater distance as a State's seaward boundary existed 'in the Gulf of Mexico* or any of the Great Lakes *at the time such State became a member of the Union,* or as heretofore approved by the Congress' *is within the territory of the States and the United States.* This assertion of congressional policy will confirm the fact that such area is within the jurisdiction of the United States, and therefore it is subject to legislation by the Congress.

* * *

"As shown by the evidence furnished by the State Department and by the Presidential proclamation and Executive order of September 28, 1945, *the vesting or establishment of these proprietary rights in the States is a matter of domestic concern and will not interfere with international law or present and future international agreements and obligations,* so long as they are vested or established subordinate and subject to the constitutional powers of the national sovereign. *That is exactly what is intended to be accomplished by the terms of Senate Joint Resolution 13 . . .*"[14k]

[14k] 99 Cong. Rec. 4382, 4384, 4385.

Members of Congress in opposition to the Submerged Lands Act raised the contention that the proposed Act was both contrary to United States foreign policy and violative of international law. This was the basis of four attempts to amend the bill to limit all States to three miles, all of which were defeated. See Point II, B, 5, *infra*, pp. 41-46.

So, the Congress was fully aware of and rejected the untenable fallacy that the transfer to the States of the property rights beyond three miles would conflict with the nation's traditional foreign policy, or that the Act would conflict with international law, an error which was refuted by Attorney General Brownell, by former Solicitor General Perlman, and by Mr. Tate of the State Department, under careful examination by the members of the Congress.

D. THE SAME QUESTION, PRESENTED IN ALABAMA V. TEXAS, WAS HELD TO BE A DOMESTIC ISSUE.

The Solicitor General (who has posed the same untenable concept in this case) was the Assistant Attorney General of the United States who defended Federal public officials in *Alabama (and Rhode Island) v. Texas*, 347 U. S. 272. The Act was upheld against identical contentions by Alabama and Rhode Island that the United States could not grant property rights more than three miles from low water mark *because to do so would conflict with foreign policy or international law*. See paragraphs IX, XIV,

XVII, and XXXIV (B), Motion for Leave to File Complaint and Complaint in that case.[15]

Also, Alabama in its brief (pp. 64-67) argued that the alleged position of the State Department concerning the maximum permissible territorial belt prevented the Court from recognizing any grant beyond three miles, Alabama having stated:

> "... [The] United States took this position as a part of its conduct of foreign relations."

This contention was completely rejected by this Court in deciding the case solely on the basis of domestic law. The keen awareness of this Court of Alabama and Rhode Island's contentions as to the Texas grant extending three marine leagues[16] is pointed up not only in the per curiam opinion of the Court, but also in the concurring and dissenting opinions.

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[15] Typical is the statement in Alabama's Motion for Leave to File Complaint and Complaint, Alabama v. Texas No. , Original, October Term, 1953, at p. 11:

"The rule of *international law* which has been settled and established for the United States *by virtue of determinations made by the Government* of the United States is that the *permissible* width of this belt is three nautical miles. This rule is binding equally on the State of Alabama and on the State of Texas. The area more than three nautical miles seaward from the low water mark along the portion of the coast of Texas which is in direct contact with the open sea and from the seaward limit of inland waters along the coast of Texas (and in particular the area from three to nine nautical miles from such line) is therefore part of the high seas and outside the territorial boundaries of Texas."

[16] Three marine leagues are equal to nine marine miles or 10.35 statute miles. See Table of Sea Measure Equivalents, Exhibit V, infra, p. 223.

Mr. Justice Black, in his dissent stated:

> "Some states are given a three-mile strip of ocean; some states are given about ten miles; . . ." 347 U. S. at 276.

The Court said:

> "The power of Congress to dispose of any kind of property belonging to the United States 'is vested in Congress without limitation' . . . 'For it must be borne in mind that Congress not only has a legislative power over the public domain, but it also exercises the powers of the proprietor therein. Congress "may deal with such lands precisely as a private individual may deal with his farming property. . . ." "Article IV, 3, C. 2 of the Constitution provides that 'The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory and other Property belonging to the United States.' The power over the public land thus entrusted to Congress is without limitations. 'And it is not for the courts to say how that trust shall be administered. That is for Congress to determine . . .' 'We have said that the constitutional power of Congress . . . is without limitation.' " 347 U. S. at 273.

Mr. Justice Reed, concurring, stated:

> "The cession challenged here does not affect the power and responsibility of the United States as sovereign to foster and protect against foreign and domestic enemies that area or resources ceded to the proprietorship of the respective states . . . Moreover, the Submerged

> Lands Act purports to convey to the states only 'the lands beneath navigable waters' and 'the natural resources within such lands and waters.' " 347 U. S. at 276.

And he pointed out that under the Act the United States retained its control over *"international affairs"* and the other powers reserved to the United States in Section 6 of the Act. 347 U. S. at 276.

The only basis we can perceive for the Government's assertion that the controversy is wholly domestic, yet must be determined by reference to foreign policy, would be a contention either that Section 6 reserving navigation control and international affairs does not exist or that the Act is unconstitutional. Section 6 does exist. The constitutionality of the Act was upheld by this Court in the *Alabama-Rhode Island* case, *supra*, where the question was held to be a domestic one.

Therefore, the contention that this case must be decided with reference to "foreign policy" is wholly without merit.

E. THE GRANT TO TEXAS OF RIGHTS TO ITS THREE-LEAGUE BOUNDARY IS CONSISTENT WITH THE NATIONAL POLICY AS DECLARED BY THE PRESIDENT

It would seem a paradox that the same Attorney General who advised Congress as to how to remove from the grant any question concerning foreign affairs or international law, and whose Department successfully defended the grant and the Act in *Alabama-Rhode Island v. Texas*, *supra*, should seemingly reverse his position by filing this complaint. This

seeming paradox is perhaps explained in a letter dated December 4, 1957, from President Eisenhower to H. J. Porter (Republican National Committeeman).[17]

The issues as developed in *United States v. Louisiana* had raised questions which in the opinion of the Court required the presence before the Court of all of the Gulf Coast States. The Court's order, however, did not dictate to the Attorney General the position he should take on the validity of the Texas three-league boundary.

Apparently, the Attorney General construed the Court's order permitting the States of Florida, Alabama, Mississippi, and Texas to be made parties as a directive from the Court to take an adversary position against Texas and contrary to the "considered view" of the President and contrary to the Attorney General's position before Congress. We differ with this construction.

In any event it is clear that the act of filing this complaint against Texas and its allegations are not themselves evidence of the executive policy of President Eisenhower, because after this comlpaint was

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[17] This letter reads in part:

"*The Attorney General of the United States did not bring suit against the State of Texas on his own initiative.* In its order of June 24, 1957, the Supreme Court said that the orderly determination of the issues in the *Louisiana case* 'requires' that Texas and other Gulf States be made parties thereto. *So, the Attorney General was compelled by the Court itself to bring Texas into the litigation.*

"It has been and still is my considered view that Texas should have the right to explore and exploit those Submerged Lands which extend seaward of her coast line into the Gulf of Mexico for a distance of three marine leagues . . ." *Houston Post,* December 7, 1957, pp. 1-2, *Houston Chronicle,* December 6, 1957, pp. 1, 24.

filed the President stated, "The Attorney General of the United States did not bring suit against the State of Texas on his own initiative," and "it has been and still is my considered view that Texas should have the right to explore and exploit those Submerged Lands which extend seaward of her coast line into the Gulf of Mexico for a distance of three marine leagues . . ." [18]

II.

TEXAS' HISTORIC THREE-LEAGUE BOUNDARY IS THE MEASURE OF THE TRANSFER MADE TO TEXAS BY THE UNITED STATES UNDER THE ACT.

Since the property rights acquired by Texas from the United States in the seabed and subsoil flow from the Act, it is, we believe, necessary to discuss the Act, and its meaning, before developing the factual data to show that Texas comes within the terms of the Act as to its three-marine-league boundary. The historical discussion of Texas' three-league boundary will be found under Points III and IV, infra, pp. 74 and 111, respectively.

A. SECTIONS 2, 3 AND 4 OF THE ACT ARE CLEAR. HISTORIC BOUNDARIES WERE CAREFULLY DEFINED IN SECTIONS 2 AND 4. SECTION 3 EFFECTS A GRANT OF PROPERTY RIGHTS OUT TO THESE HISTORIC BOUNDARIES.

With the exception of the Great Lakes boundaries, only State boundaries are mentioned in the Act, and not national or international boundaries. As to Texas, this case is simple and the proper construction of the Act is plain.

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[18] See note 17, supra.

Section 2 (a) (2) of the Act defines "lands beneath navigable waters" as being:

> ". . . lands permanently or periodically covered by tidal waters . . . seaward . . . to the boundary line of each such State where in any case such boundary as it *existed at the time such State became a member of the Union*[19] . . . *extends seaward (or into the Gulf of Mexico) beyond three geographical miles . . .*"

The relevant portion of Section 2(b), insofar as it relates to Texas or the Gulf of Mexico, reads in part as follows:

> "The term 'boundaries' includes the seaward boundaries of a State, or its boundaries in the Gulf of Mexico . . . *as they existed at the time such State became a member of the Union, . . . or as extended or confirmed pursuant to Section 4 hereof but in no event shall the term 'boundaries' or the term 'lands beneath navigable' waters' be interpreted as extending from the coast line . . . more than three marine leagues in the Gulf of Mexico.*"

Section 3 of the Act, provides that "it is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters[20] within the boundaries[20] of the

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[19] The omitted words are "or as hereafter approved by Congress."

[20] Bearing in mind the definitions of Sec. 2 as explained by the last sentence of Sec. 4.

respective States . . . and (2) the right and power to manage, administer, lease, develop and use the said lands and natural resources all in accordance with applicable State laws be and they are hereby . . . recognized, confirmed, established, and vested in and assigned to the respective States . . ."

The term "boundaries . . . as they existed at the time such State became a member of the Union," as utilized in the Act, is simply a geographical measure of the proprietary interests granted.

The last sentence of Section 4 provides:

> "Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundaries beyond three geographical miles if it was so provided by its Constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

This sentence explains what Congress meant by the definition in Section 2 of "boundaries . . . as they existed." It can only mean that if there was a provision in the Constitution or laws prior to or at the time the State became a member of the Union such boundaries "existed" at the time such State became a member of the Union.

As explained to the Senate by Senator Holland, a co-author of S. J. R. 13:

> ". . . [T]he only way that any limit for any State could ever be fixed beyond 3 geographical miles under the proposed law would be by fulfilling the conditions prescribed, that is, by showing 'that its constitution or laws prior to or at the

> time such State became a member of the Union' made such a provision, or if its seaward boundary 'has been heretofore . . . approved by Congress . . .' "[21]

It is highly significant that two references were made in the Act to the Gulf of Mexico. One is contained in Section 2(a)(2) where reference is made to the existence of a boundary beyond three geographical miles into the Gulf. The other appears in Section 2(b) which provides that the term "boundaries" or the term "lands beneath navigable waters" shall not be "interpreted as extending from the coast line more than 3 geographical miles into the Atlantic Ocean or the Pacific Ocean, *or more than three marine leagues in the Gulf of Mexico.*" There was ample reason for this because the Congress and the President both knew that Texas had a three-league boundary prior to and at the time of its admission into the Union—a boundary that was provided by its "laws." The Submerged Lands Act was enacted with this specific statute in mind, which described Texas' boundaries as:

> "Beginning at the mouth of the Sabine River, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande . . . ,"[22]

The existence of this Act being conceded by the Government (Gov't. Br., p. 188), the Government's contention that the grant to Texas should be limited to three miles is without merit.

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[21] 99 Cong. Rec. 2896.

[22] 1 Laws, Republic of Texas, 133, Dec. 19, 1836.

B. THE LEGISLATIVE HISTORY SHOWS THAT CONGRESS INTENDED TO GRANT PROPERTY RIGHTS TO TEXAS MEASURED BY ITS HISTORIC THREE-LEAGUE SEAWARD BOUNDARY.

Seldom in the history of Congress has legislation been so thoroughly and minutely considered as was the Submerged Lands Act and the companion Shelf Act. This legislation had a long and controversial history in which over seven thousand pages of testimony and exhibits were adduced in at least sixteen formal congressional hearings. All prior hearings were incorporated by reference in the hearing before the Senate Committee on S. J. R. 13.[23] The debates on this legislation in the Senate and the House extended over twenty-seven days.

It is undisputed in the Committee hearings, the Committee reports, and the extended debates that with respect to Texas the words, "boundary as it existed at the time such State became a member of the Union", referred to the three-league boundary in the Gulf, which was established and maintained while Texas was a Republic and which was adopted and carried forward by the United States in the Treaty of Guadalupe Hidalgo.

On page after page of the hearings and debates the sponsors of the bill, the committees which handled the bill, and the opponents of the legislation so interpreted the effect of the bill. Regardless of its effect as to other States, the legislative history shows conclusively that Congress intended by this Act to grant

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[23] Hearings on S. J. Res. 13, Senate Committee on Interior and Insular Affairs, 83rd Cong., 1st Sess. 6 (1953).

property rights to Texas measured by the full extent of its historic three-league Gulfward boundary. It is highly significant that the Government cites no legislative history to the contrary insofar as Texas is concerned.

In this case, Texas takes no position as to the rights of other States. Regardless of their situation, it is evident that as to Texas the Congress clearly intended to grant property rights out to its historic three-league boundary, because it provided and intended that such grant be measured by the historic boundary which existed in the laws of Texas prior to and at the time Texas became a member of the Union.

1. *Committee Hearings Recognized Three Leagues for Texas.*

The author of the bill, Senator Holland, who was the first witness before the Senate in the 1953 hearings, made clear the intent of the bill with respect to Texas when he said:

> "... It will be noted that this bill relates to off-shore lands beyond the three-mile limit in only two cases, the West coast of Florida and the coast of Texas, both of which States have, under their constitutions, boundaries extending three leagues into the Gulf of Mexico." [24]

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[24] Hearings, *id.* 34. Actually the Texas three league boundary was contained in its Boundary Act which was continued in effect by Article XIII Section 2, of the 1845 Texas State Constitution. 2 Gammel's *Laws of Texas* 1298-99.

Immediately thereafter Senator Holland filed with the Committee a list of "Approximate areas of submerged lands" which would be granted to the States by the bill.[25] The seaward area for Texas was listed as 2,446,560 acres, which was figured on the basis of three leagues. A footnote to this table reads as follows:

> In figuring the marginal sea area, only *original State boundaries* have been used. These coincide with the 3-mile limit for all States except Texas, Louisiana [25a] and Florida Gulf Coast. In the latter cases, the *3-league limit* as established *before or at the time of* entry into the Union has been used."

Senator Daniel of Texas presented a documented statement to the Senate Committee setting out the Texas Boundary Act of 1836 and explained that this was maintained throughout the life of the Republic of Texas; that it was the boundary which existed prior to and at the time that Texas entered the Union; and that it was thereafter carried forward by the United States in the Treaty of Guadalupe Hidalgo.[26]

Secretary of Interior McKay testified before the same Committee that he recognized that three leagues was the historic boundary of Texas and the

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[25] Hearings, *id.* 35.

[25a] See explanation by Senator Holland as to Louisiana, 99 Cong. Rec. 2755.

[26] Hearings, *id.* 212-233.

West Coast of Florida and that the legislation would extend to that distance in these two cases. He said:

> "I mean the 3-mile limit as far as my State [Oregon] is concerned. I mean 3 leagues, as far as yours, sir, that is, Texas and Florida."[27]

Attorney General Brownell, upon being asked where he would fix his proposed line with respect to Texas, told the Senate Committee:

> "Our thought generally, Senator, without going into great detail, is that this line would be 3 miles out, except in the case of Texas and the West Coast of Florida." [28]

He further testified:[29]

> "In order that there may be no misunderstanding, generally speaking what we have in mind is a 3 mile line, except for the Coasts of Texas and the West Coast of Florida, where 3 leagues would generally prevail."

Senator Holland asked him:

> "The reason you make those two exceptions is because it is your understanding that the Constitutions of Texas and Florida provide that the 3-league off-shore limit is the limit clear across Texas and along the West Coast of Florida in the Gulf of Mexico."

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[27] Senate Interior Committee Hearings on S. J. Res. 13, 529.

[28] *Id.* 931.

[29] *Id.* 957.

To which Attorney General Brownell responded:

> "That plus the action of the Congress in relation to it."

It should be noted that Attorney General Brownell was proposing that lines be drawn in accordance with the measurements in the bill which was subsequently enacted. Contrary to the implication on pages 250-51 of the Government's Brief, the Attorney General was not proposing that his delineation would be any different than already contained in the bill. [30]

A very significant memorandum was presented to the chairman of the Senate Committee by Mr. Stewart French, Counsel, Senate Interior Committee, the relevant portion of which reads as follows:

> "There has been considerable discussion in the submerged lands hearings as to historic State seaward boundaries. For convenient reference, I submit the following table of provisions with respect to sea boundaries in the enabling acts under which the coastal States, other than the original 13, entered the Union, or in pertinent State constitutions which were approved by Congress.
>
> * * *
>
> "*Texas.* — The Republic of Texas was proclaimed March 2, 1836, and on December 19, 1836, the Texas Congress passed an act defining the boundaries of the Republic (1 Laws,

[30] *Id.*, 926.

> Republic of Texas). The southern boundary was described as follows: 'Beginning at the mouth of the Sabine River, and running West along the Gulf of Mexico 3 *leagues* from land to the mouth of the Rio Grande.' In the annexation resolution of 1845, the 28th Congress declared it 'doth consent that the Territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State***' (9 Stat. 926). The Treaty of Guadalupe-Hidalgo (9 Stat. 922), February 2, 1848, provides in Article V:
>
> "The boundary line between the two Republics (*id est*, the United States and Mexico) shall commence in the Gulf of Mexico, *three leagues* from land, opposite the Rio Grande * * * "[31]

In the course of the same hearings[32] Mr. H. G. Barton, Chief, Oil and Gas Leasing Branch, Conservation Division, United States Geological Survey, submitted eight tables pertaining to wells and fields within, or without, "traditional State boundaries." As to Table I, he states:

> "All data are segregated to show production landward and seaward of the traditional state boundaries, which, for the purpose of this report, are assumed to be 3 nautical miles seaward of mean low tide . . . *and* 3 *leagues* (9 nautical miles)[33] seaward for Texas."

The same interpretation of the Texas three-league boundary as the measure of the grant was made in

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[31] *Id.*, 1232, 1233.
[32] *Id.*, 567-78.
[33] 10.35 statute miles.

the House Committee. Congressman Wilson, in describing the Outer Shelf area which was being assigned to Federal jurisdiction in the same bill, said:

> "I was speaking particularly with regard to outside the State boundaries of 10½ miles of Texas and Florida, and 3 miles for the rest of the States. Historical boundaries are what we are talking about. I say outside the historical boundaries."[34]

Congresswoman Thompson in questioning Secretary McKay in the House Committee said:

> "Miss Thompson. I take it when you speak of historical boundaries, you mean 10 or 10½ miles?
>
> "Secretary McKay. I mean whatever the State *had* when it came into the Nation. Most of the States are 3 miles. Texas is 3 leagues, I believe."[35]

The following exchange occurred between Congressman Celler and Secretary McKay:

> "Mr. Celler. Mr. Secretary, I believe your statement, if I may be privileged to sum it up, says that the right of disposal lies in the Federal Government concerning the land submerged under the sea seaward from the limitation of the State boundaries; is that correct?

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[34] H. R. Judiciary Committee Hearings on H. Res. 4198, 83rd Cong., 1st Sess., 188.

[35] *Id.*, p. 195.

"Secretary McKay. Yes, sir, of the *historic* boundaries. In most cases of these States, it is 3 miles to sea, except in Texas and Florida, where it is, of course, *3 leagues.*"[36]

2. *Committee Reports Apply Three Leagues As Measurement For Texas*

Both the Senate and House Committees included in their official reports the approximate acreage which would be granted to Texas by the bill as 2,466,560 acres, which was figured on the basis of three leagues as the measurement from coast. Both Committee reports contain the same acreage chart originally presented to the Senate Committee by Senator Holland. The Committees carried forward in their reports the explanation that "only original State boundaries have been used" and that for the State of Texas "*the 3 league limit* as established *before* or *at the time of* entry into the Union has been used." [37]

In the Senate report, and referring to the granting clause of the bill, it is stated, in summary, that it "provides that the rights of ownership of lands and natural resources beneath navigable waters *within the historic boundaries of the respective states* are vested in and assigned to the states." [38]

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[36] House Hearings, p. 181.

[37] Report No. 215, House Committee on the Judiciary, H. R. 4198, 83rd Cong., 1st Sess., 57; Report No. 133, Senate Committee on Interior and Insular Affairs, S. J. R. 13, 83rd Cong., 1st Sess., 76.

[38] Submerged Lands Act, Report No. 133, Committee on Interior and Insular Affairs, U. S. Senate, S. J. R. 13. p. 10.

Appendix E of this Report (p. 65) states:

> "Texas' boundary was fixed *three marine* leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by the annexation agreement."

This same statement is found in the House Judiciary Committee Report.[39] In each instance this language was contained in previous committee reports on bills which had the same language as to the measure of the grant, which reports were incorporated in full in the 1953 reports. Here we have a clear finding of the committee as to the Texas boundary it referred to in the words "at the time" Texas became a member of the Union.

3. *Maps Used In Senate Debate Showed Three Leagues For Texas*

Senator Holland, author of the bill, placed a large map on an easel at the rear of the floor of the Senate outlining the general extent of the grant intended for each State, and this map [see opposite page] remained on the floor during the extended discussions of the bill. As shown by the following statements of Senator Holland, the map marked three leagues as the measurement of the grant for Texas. Senator Holland said at the beginning of his argument:

> "Mr. President, if Senators will give attention for a moment to the map which is placed in the

[39] Report No. 215, p. 43.

rear of the Chamber, and which I believe reasonably and clearly outlines this situation, they will note that the map has a very narrow, dark line surrounding the entire Nation on the Atlantic frontage and on the Gulf of Mexico frontage and on the Pacific Ocean frontage of the continental United States. *That narrow line represents the areas which are covered by the joint resolution*, insofar as any grant of offshore lands to States is concerned. Senators will note that on the west coast of the mainland of the State of Florida that narrow belt is about three times as wide as it is all the way down the Atlantic coast, and they will also note that on the entire Texas frontage on the Gulf of Mexico the same situation obtains.

The reason for that is, as has been already stated in the debate on several occasions, that the State of Texas claims for its entire frontage on the Gulf of Mexico a 3-league belt, by reason of the fact that it, as an independent republic, had set its boundary *at 3 leagues from its coastline in 1836*, long before it came into the Union . . .[41]

* * *

". . . As to offshore lands confirmed to the States, this measure is confined to those lands which extend out to the 3-mile limit with two exceptions. The State boundary of the west coast of Florida and the boundary of the entire coast of Texas extends 3 leagues into the Gulf of Mexico . . ." [42]

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[41] 99 Cong. Rec., p. 2745.

[42] *Id.*, 2746.

Many other Senators referred to the map during the debates, including Senator Daniel, who said with respect to the map:

> ". . . On the gulf coast it will be noted that the boundaries of Florida and Texas are 3 *leagues* from shore, while the boundaries of the other Gulf Coast States extend out 3 miles from shore." [43]

4. *Floor Debates Recognized Three Leagues For Texas*

In pages 50-51 if its brief, the Government attempts to show by colloquy between Senators Douglas and Cordon that Senator Cordon did not interpret the bill as applying to the Texas three-league boundary which existed "prior to" Statehood. In doing so, the Solicitor General omitted the preceding colloquy which shows the true interpretation not only of Senator Cordon but Senator Daniel, a co-author of the bill, and Senator Douglas, an opponent of the measure, as follows:

> "MR. DOUGLAS. I should like to ask specifically, what is the understanding of the distinguished Senator from Oregon as to what this provision does to the boundary of Texas? What does it mean in the case of Texas?
>
> "MR. CORDON. The Senator from Oregon is not going to attempt to bound the State of Texas

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[43] *Id.*, 2816.

on the floor of the Senate. The boundary of the State of Texas is the boundary which was established for the State of Texas when she voluntarily pulled down her own flag and ran up the flag of the United States. That boundary has not changed.

"MR. DANIEL. It may be that the Senator from Illinois wishes to make certain that the State of Texas does not claim that its boundary at the time of its admission to the Union extended beyond 3 leagues. I may say that the boundary of the State of Texas at the time it entered the Union existed 3 leagues from shore, which is equal to 9 marine miles, or 10½ statute miles.

"So 3 leagues from shore is the boundary Texas has always had since 1836. That was the boundary claimed by Texas at the time Texas entered the Union, and it is the boundary which Texas insists applies in the consideration of the question pending before the Senate today.

"MR. DOUGLAS. Mr. President, does the Senator from Oregon agree with the interpretation of the Senator from Texas?

"MR. CORDON. The Senator from Oregon is not going either to agree or disagree. *The Senator from Oregon gives his opinion that the argument seems to him to be sound*, but he is not passing upon that question because he does not have the power to pass upon it." [44]

* * *

[44] 99 Cong. Rec. 2620-21.

"MR. CORDON. With respect to the three league limit, there was in the treaty—

"MR. DANIEL. The treaty of Guadalupe Hidalgo.

"MR. CORDON. Yes; the Treaty of Guadalupe Hidalgo. That treaty recognizes a boundary line extending *three leagues* from the mouth of the Rio Grande into the Gulf of Mexico, as the boundary line between the United States and Mexico.

"MR. AIKEN. The distinguished former attorney general of Texas (Mr. Daniel) is a member of this body, and I am glad he is here. I should like to ask whether Texas is willing to accept that as its boundary? . . .

"MR. DANIEL. I desire to make it clear that under the resolution the State of Texas is not granted any property or released any property beyond its boundaries as they existed at the time the State entered the Union, which were fixed in the Gulf of Mexico at 3 leagues and later fixed in the Treaty of Guadalupe Hidalgo at 3 leagues. Nothing in this resolution would permit the State of Texas to claim ownership beyond 9 marine miles which equal 10½ statute miles. . . .

"MR. AIKIN. Then the passage of the resolution would, to all intents and purposes, so far as I am concerned, leave the boundaries of the State fixed at the 3-league limit from the shore.

"MR. DANIEL. Certainly, it would leave the boundary of the State of Texas, so far as the ownership of any lands is concerned, at 3 leagues. That is correct. . . .

"MR. LONG. With regard to the Texas question, I wish the very able Senator from Vermont would look at the map [This brief, p. 111, infra] which appears at page 411 of the hearings. It was prepared by the United States Government and shows the boundary between Texas and Mexico as fixed in the Treaty of Guadalupe Hidalgo. There is no doubt that the United States in that treaty, recognized the Mexican boundary at 3 leagues and also the Texas boundary of 3 leagues. . . ."

* * *

"MR. DOUGLAS. Does the Senator from Texas believe that the resolution affirmatively gives to Texas the right to claim title and ownership out to 3 leagues or 10½ miles?

"MR. DANIEL. The Senator from Texas very definitely believes that the resolution gives the State of Texas the ownership and title out to the boundaries of the State of Texas as they existed at the time the Republic of Texas came into the Union as a State, which boundaries were, of course, 3 leagues, and were so recognized then and have thereafter been recognized by the United States Government."

* * *

"MR. DOUGLAS. Would the Senator from Oregon permit me to thank the Senator from Texas for clearing up a feature concerning *the intended legal effect* of the resolution which I labored all yesterday afternoon to try to clear up? [47]

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[47] 99 Cong. Rec. 2695-2696.

On April 10, 1953, Senator Douglas, still an opponent of the bill, made this statement:

> "The pending joint resolution seems clearly intended by its chief proponents to transfer at once ownership and control of the submerged lands, beyond the 3-mile limit out to 3 leagues or 10½ miles from shore, in the cases of, first, Texas, on the ground that its statute of 1836 gave it such a boundary at the time such state became a member of the Union; and, second, Florida, on its West Coast on the ground that its constitution of 1868 gave it such a boundary and that this was therefore approved by Congress in the Act of June 25, 1868—readmitting Florida to representation in Congress." [48]

Many more examples of similar discussions during debates and hearings demonstrate beyond doubt that both the proponents and opponents of the bill fully intended the Act to effect a tranfer of property rights to the full extent of Texas' traditional historic three-league boundary. Congress was completely and consciously aware of Texas' three-league historic boundary, as being the measure of the grant to Texas under the words "to the boundary . . . as it existed at the time such State became a member of the Union." Additional excerpts from the hearings and debates are compiled in Appendix B, p. 225.

5. *Congress Defeated Four Attempts to Limit Texas to Three Miles*

While the legislation was pending in the Senate, Senator Anderson of New Mexico offered a substi-

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[48] 99 Cong. Rec. 2916.

tute which would have limited the transfer of all rights to three miles from coast.[49] Senator Anderson said:

> "... Instead, the joint resolution sets a line as far as 10½ miles off the shore." [50]

The Anderson substitute would have placed in the Act the very three-mile limit for Texas for which the Government now contends. His substitute was thoroughly debated in, and rejected by, the Senate. Senator Anderson made practically the same argument that the Government makes in its brief as to the three-mile limit, and he discussed [51] the very point about territorial waters and foreign policy which the Government seeks to interject into this case (by unwarranted assumption from the Dulles letter). After extensive debate and consideration the Senate tabled the Anderson substitute by a vote of 56 to 33, with 7 not voting. [52]

Senator Monroney next submitted amendments to the resolution.[53] He stated:

> "... First of all, it would provide a definite cutoff of quitclaiming title to three miles in the open sea, and thus eliminate all the other limits, up to 10½ miles on the West Coast of Florida and all along the Coast of Texas." [54]

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[49] 99 Cong. Rec., 2907, 3956.
[50] *Id.*, p. 3951.
[51] *Id.*, p. 3951.
[52] *Id.*, pp. 3956-3957.
[53] *Id*, p. 4069.
[54] *Id.*, p. 4201.

The Monroney amendment was rejected by a vote of 59 to 22 with 15 not voting,[55] after full development of the special historical situation with respect to Texas three-league boundary.[55a]

Still another attempt was made by Senator Magnuson to limit the grant. He stated:

> "In effect the two amendments limit the so-called Holland Joint Resolution to the three-mile limit. In other words, they invalidate the portion of the Joint Resolution which would allow Texas and Florida to go beyond the historic three mile limit." [56]
>
> * * *
>
> "The net effect of these amendments is to restrict the application of Senate Joint Resolution 13 to a strip of sea, extending three miles oceanward from low tide on all coasts — Pacific, Atlantic and Gulf." [57]

The debate in opposition to the Magnuson amendments consisted of a detailed explanation of the Texas three-league boundary, the Treaty of Guadalupe Hidalgo, and the other reasons offered in this brief why the three-league boundary should remain as the measure of the grant insofar as it concerns Texas. The Magnuson three-mile amendments were rejected by the Senate.[58]

A clear choice was presented to the Senate. The majority voted in favor of a bill which would pro-

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[55] *Id*, p. 4203.
[55a] *Id.*, p. 4171-6.
[56] *Id*, p. 4473.
[57] *Id.*, p. 4474.
[58] *Id.*, p. 4478.

vide for a transfer from the United States to Texas of the subsoil property rights within its historic three-league boundary in the Gulf of Mexico. It refused to limit the transfer to three miles.

Similarly, the same contentions were made in the House, which was aware of Texas' three-league historic boundary. An amendment offered by Congressman Yates, which would have had the same effect as the proposed Senate amendments, was rejected in the House by a vote of 83 to 17.[59]

In explaining the effect of his proposed amendment, Congressman Yates said:

> ". . . I think it is better that we legislate now, that we declare now that it is the national interest for the seaward boundary of the United States, regardless of what State boundaries may be claimed, to be 3 miles from the shore line. We will then have a uniform boundary line all around our Nation. Beyond that line will lie the sphere of the Federal Government and international questions." [60]

Congressman Wilson, after explaining that the amendment would cut off a grant to Texas of the full extent of her historic boundary, stated:

> "Certainly we do not want to pass a bill denying a treaty entered into by and between the United States and any State of the Union; and if we did do that it would go, of course, to the very nub of this bill . . . and would deny to Texas . . . their privileges guaranteed to them under the Constitution by right of contract and treaty

[59] *Id.*, p. 2569.
[60] *Id.*, p. 2568.

and of the right to affix their historical boundaries as is provided in the bill." [61]

No clearer evidence of congressional awareness and intent to grant Texas' three-league property rights could be found than the defeat of these amendments in the Senate and the House which would have changed the intended effect of the bill to that now contended for by the Government.

It is fundamental that the judicial function to be exercised in construing a statute is limited to ascertaining the intention of the Congress [62] and that courts should construe laws in harmony with legislative intent and carry out the legislative purpose.[63]

The Court is authorized to seek enlightenment from "congressional committees and explanations given on the floor of the Senate and House by those in charge of the measure." [64] Senator Holland, together with Senators Daniel and Cordon, were in charge of this bill in the Senate.

The only competent constitutional authority empowered to decide this domestic political question,[64a]

[61] *Ibid.*

[62] *Ebert v. Poston*, 266 U. S. 548.

[63] *Foster v. United States*, 303 U. S. 118, 120. Also, words are to be construed to effect the intent of the lawmakers and the context, the purposes of the law, and the circumstances under which the words were used, are to be given effect (*Vermilya-Brown Co. v. Connell*, 335 U.S. 377), and "the words are not to be bent one way or another, but are to be taken in the sense which will manifest the legislative intent." (*Helvering v. Stockholm Enskilda Bank*, 293 U. S. 84, 94).

[64] *Wright v. Vinton Branch Mountian Trust Bank*, 300 U. S. 440, 463.

[64a] *Foster v. Neilson*, 2 Pet. 253.

". . . the Legislative and Executive branches having decided the question, the courts of the United States were bound to regard the boundary determined on by them as the true one." *Garcia v. Lee*, 12 Pet. 511, 518.

namely, the Congress, intended to grant, and did grant, to Texas sub-sea property rights within its three-league historic boundary. This is abundantly shown by the best evidence of congressional intent—the wording of the Act itself, the committee reports, and the expressions of members of Congress, particularly the authors and floor managers of the bill.

6. *The President Intended That the Act Should Extend Three Leagues for Texas and So Advised the Congress*

The President of the United States also understood Texas' three-league historic boundary and that the legislation effected such a grant.

Senator Humphrey inserted in the *Congressional Record*[65] a letter to the President dated April 17, 1953, signed by Senator Anderson and others, stating that they were informed that the bill sets up a three-mile belt for every coastal state except Florida and Texas "where the belt will be 10½ miles." Reference was made to national policy and "complications with other nations."

The President's reply of April 24, 1953, was inserted in the *Congressional Record* of April 25. He gave his complete support to the pending measure and said, in part:

> "The Republican Party Platform clearly stated, 'We favor restoration to the States of their rights to all lands and resources beneath

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[65] 99 Cong. Rec., p. 3532.

navigable inland and offshore waters *within their historic boundaries.*'

"During the past campaign on October 13, I made the following statement:

" 'So, let me be clear in my position on the tidelands and all submerged lands and resources beneath inland off-shore waters which lie within *historic state boundaries.* As I have said before, my views are in line with my party's platform. I favor the recognition of clear legal title to these lands in each of the 48 states.

" 'This has been my position since 1948, long before I was persuaded to go into politics . . .

'The Supreme Court has declared in very recent years that there are certain paramount Federal rights in these areas. But the Court expressly recognized the right of Congress to deal with the matters of ownership and title.

" 'Twice by substantial majorities both Houses of Congress have voted to recognize the *traditional* concept of State ownership of those submerged areas. Twice these acts of Congress have been vetoed by the President.

" 'I would approve such acts of Congress.'

"The next day ,October 14, I made specific reference to the State of Texas:

" 'Just a hundred and seven years ago the United States Senate decided that the public lands of Texas were not worth $10,000,000 . . . so the United States said to Texas, ' 'Keep your debts—and keep your lands. We don't want either.' ' And so the State of Texas paid off the $10 million debt of the Republic. It kept its . . . lands, *including the submerged area extending*

3 marine leagues seaward into the Gulf of Mexico.'

"My position is the same today. It was further amplified by the administration representatives in the hearings before the Senate and your committees considering the legislation.

"I favor the prompt passage by the Senate of Senate Joint Resolution 13 with any amendments the Senate may approve not inimical to the principles which I have expressed." [65a]

So, not only does congressional history concretely reflect that Congress intended to grant property rights to Texas measured by its historic three-league boundary—but that was also the intention of the President, and his purpose in approving the bill.

7. *Three League Intent and Effect of the Bill Was Public Knowledge*

The intent and effect of the Submerged Lands Act in granting to Texas property rights to the extent of its historic three-league boundary was known not only to the Congress, the President, and the Department of State, but to the public at large. Officials and citizens living in Washington did not have to read committee reports or the *Congressional Record* to know the effect of the bill, because the newspapers circulated in the Nation's capital consistently reported the effect and intent of the bill in the following manner:

"The Senate version would vest in States the title to offshore submerged areas within their three-mile limit, or, in the case of Texas and

[65a] 99 Cong. Rec. 3865.

Florida, within a ten-mile belt." *Washington Evening Star*, March 31, 1953. p. A-2.

"The bill would give the states title to the continental shelf within their "historic boundaries" (10 1/2 miles seaward in the case of Texas and Florida, 3 miles for all other coastal states)." *New York Times*, April 5, 1953, p. 2-E.

"The pending (Senate) bill grants the coastal states title to submerged lands within their historic boundaries — or three miles seaward, except in the case of Texas and the Gulf Coast of Florida, where the seaward limit would be 10 1/2 miles." *Washington Post*, April 28, 1953, p. 1.

A list of similar news articles published during the pendency of the bill in two of the Washington newspapers and in the *New York Times* is attached to this brief as Appendix D.

8. *Present State or National Boundaries Were Not Intended As the Measure of the Grant*

At no place in the Act or the hearings, reports, or debates was it contended either by proponents or opponents that the language "boundary as it existed at the time such State entered the Union," referred to present State or national boundaries.

On the contrary, it was stated in the committee reports and by practically every member of Congress who discussed the bill that the grant was to the "historic State boundaries" which already existed at the time the States entered the Union, or as approved by Congress. Even the Government recognizes this in its brief in referring to Congress "allowing the

Gulf States the benefit of three-league boundaries *if* such boundaries had already been approved by Congress or *had actually existed* when the States entered the Union . . ." Government Brief, 14.

In the committee hearings, reports, and debates in the 83rd Congress, the term "historic State boundaries" was used 813 times in describing the extent of the grant. The term "original boundaries" of the States was used 121 times, and "traditional" State boundaries 114 times, and they were fully known to and understood by the Congress and by the President when the Act was finally approved.

Not once in its 425 page brief does the Government cite a single use of the term "*present* State boundaries," "*national boundary*," or "*territorial waters*" by a member of Congress, or a committee as describing the intended measure of the grant. The terms which are sought to be applied by the Government in this case simply were not used in the Congress.[65b]

The Government takes a statement of Senator Daniel (Gov't. Br., p. 402) as apparently indicating that the United States did not grant anything to Texas beyond three miles.

> "MR. ANDERSON. Mr. President, there has been a great deal of talk about historic boundaires. Why not simply include the term 'historic boundaries' in the pending measure, and let the Supreme Court interpret it?[65c]

[65b] In its own recitation of the legislative history of the Act (Gov't. Br., pp. 36-46), it is significant that the quotations listed from the 8 members of Congress refer 9 times to "historic" state boundaries, 5 times to "original" state boundaries, and 3 times to "constitutional" or "statutory" boundaries in describing the extent of the grant.

[65c] 99 Cong. Rec. 4174.

Senator Daniel answered with the sentence quoted by the Government at page 402 of its brief, but he did not end where the Solicitor General stopped quoting him. Instead, he proceeded to say:

> "Of course, Texas' boundaries did exist at 3 leagues at the time of annexation, and the Texas and Florida 3-league boundaries were heretofore approved by Congress, but that is history . . .
>
> ". . . As the Senator from Florida said, the intention was to write specifically into the joint resolution what the authors have said all along would be its effect—that it covered only and within the *historic* boundaries. The only way I know of to describe the word 'historic' by means of definition is to say, 'as the boundaries existed when the respective States entered the Union, or as heretofore approved by the Congress.'
>
> "There is good reason, Mr. President, why those words should be used. The Supreme Court of the United States has said in several cases that the Federal Government can do nothing to change the area of a State after it has entered the Union with fixed boundaries, except with consent of the State. There is another line of cases which hold that, if the boundaries are set out in a State constitution, such as the constitution of the State of Florida, which is approved by the Congress of the United States, then the United States cannot change those boundaries without the consent of the State. *That is why the terms now employed are used.* They are taken from court decisions, which have been

written in cases dealing with situations similar to the present one.

"For instance in *New Mexico v. Colorado* (267 U.S. 30, 41 (1925)) the Supreme Court said that the right of a State, upon its admission into the Union to rely upon its established boundary lines cannot 'be impaired by any subsequent action on the part of the United States.'

"And in *New Mexico v. Texas* (276 U. S. 557 (1928) the Supreme Court said:

"New Mexico, when admitted as a State in 1912, explicitly declared in its constitution that its boundary ran 'along said thirty-second parallel to the Rio Grande * * *.' This was confirmed by the United States by admitting New Mexico as a State with the line thus described as its boundary." [85d]

The foregoing constitutes a complete answer to the Government's contention that the words "existed at the time" of entering the Union means "immediately after entry," and that this Court should disregard boundaries which existed "prior to" entry into the Union. The Government gives great emphasis and italicizes the words "at the time," omitting the equal emphasis that should be given to the word "*existed*", which was obviously used in the past tense.

For a State to bring itself within the grant in excess of three miles, its wider boundary must have "*existed*" at the time such State became a member

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[85d] *Id.*, p. 4175.

of the Union ". . . beyond three geographical miles . . ." Necessarily this calls for the original establishment of the boundary prior to the instant of admission, as is the case with all new States which are admitted to the Union. The House Committee report at page 15 makes this point clear by referring to the "original" boundary line in the following description of the lands included in the grant:

> ". . . and submerged lands seaward have a distance of 3 miles or to the *original* boundary line of any State in any case where such boundary at the time the State entered the Union *extended more than three miles seaward.*"

The author of the bill, Senator Holland, made this clear in the following statement on the floor of the Senate:

> "The States of Texas and Florida would simply be left where they were placed—the State of Texas by the action of Congress and its own action in 1845 *and prior thereto*, and the State of Florida by action of Congress in 1868 and its own prior action." [46]

If any doubt remains as to whether "existed at the time it became a member of the Union" contemplates an existence "prior to or at the time of" entry, it should be satisfied by the explanation attached by the author of the bill and incorporated in both House

[46] 99 Cong. Rec., p. 4114.

and Senate Committee reports listing the acreage included within the bill:

> "In the latter cases [which include Texas] the 3-league limit as established *before* or at the time of entry into the Union has been used."[66a]

The Act itself contains this same interpretation of the meaning of the word "existed". In Section 4 it is said plainly that nothing therein contained shall be construed as prejudicing the "*existence* of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws *prior to* or *at the* time such State became a member of the Union . . ." In fact, by reading the sections of the Act together, it is clear that in Section 4 Congress has said how the *existence* of a State's boundary beyond three miles is to be proved—by showing that it was so provided in its constitution or laws prior to or at the time such State became a member of the Union.

Undoubtedly Congress would have used precisely the same language in the last phrase of Section 4 as it did in Section 2 by substituting the word "*existed*" (past tense) for the words "prior to," except for the fact that the drafter of the last sentence in Section 4 had already used the word "existence" in the first part of the sentence.

Regardless of the wording, it is clear that Congress has in Section 4 of the Act recognized that the "existence" of any State's seaward boundary

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[66a] House Report No. 215, on H. R. 4198, 83rd Cong., 1st Sess., Appendix B, 57. Senate Report No. 133 on S. J. Res. 13, 83rd Cong. 1st Sess. Appendix F, 76.

beyond three miles is confirmed by a showing that it was so provided by its constitution or laws *prior to or at the time* such State became a member of the Union. This was the interpretation of the acting chairman of the Senate Committee, Senator Cordon, when he said:

> "It [referring to what is now the last sentence of Section 4] provides that nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any state's seaward boundary beyond three geographic miles if it were so provided by its Constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress. *That is the language which reaches Florida and Texas.*" [67]

Likewise, this was the interpretation of the author, Senator Holland, who said:

> "This resolution does not give anything to anyone; it simply recognizes the Texas limits, provided Texas can, as I believe it can, show that its limits were 3 leagues out *before* it was admitted into the Union . . . Texas will have to be brought within the provisions of this resolution, based, in the one case, that of Texas, on action taken *prior to* 1845, on the part of the Republic of Texas, and action taken in 1845 by Congress in admitting Texas into the Union . . ."

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[67] Hearings on S. J. Res. 13, Senate Committee on Interior and Insular Affairs, 83rd Cong., 1st Sess. 1318 (1953).

The reports of the committees in both Houses show that Congress was aware [68] that the Court in the California [69] and Louisiana [70] cases did not attempt to fix historic boundaries, but that in the Texas case, the Court took notice of Texas' historic three-league boundary.[71]

It is evident that as to Texas the Congress clearly intended to grant property rights out to its historic three-league boundary, because Congress provided and intended that such grant be measured by the historic boundary which existed in the laws of Texas prior to and at the time Texas became a member of the Union.

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[68] Appendix C, Senate Report No. 133, Committee on Interior and Insular Affairs to accompany S. J. R. 13, 83rd Congress 1st Session, 26-48; Appendix II, House Report No. 215, on H. R. 4198, 83rd Cong., 1st Sess., 61-79; see also Hearings, Committee on Interior and Insular Affairs, 83rd Cong., 1st Session, 1183-1206.

[70] United States v. Louisiana, 339 U. S. 699.

[71] United States v. Texas, 339 U.S. 707. The Court stated: "The Republic of Texas was proclaimed by a convention on March 2, 1836. The United States and other nations formally recognized it. The Congress of Texas on December 19, 1836, passed an act defining the boundaries of the Republic. The southern boundary was described as follows: 'beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande.'" (p. 713). The Court also stated: "Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership over it, of the land underlying it, and of all the riches which it held." (p. 717). Mr. Justice Reed, dissenting, pointed out that "the court concedes that prior to the Resolution of Annexation, the United States recognized Texas' ownership of the three-league area claimed by Texas (p. 721). Mr. Justice Frankfurter stated ". . . the submerged lands now in controversy were a part of the domain of Texas when she was on her own." (p. 724).

9. *By the grant of property rights to Texas to its three-league historic boundary, Congress determined the territorial extent of the jurisdiction of the United Sates out to that boundary so as to make the grant effective.*

In the statement which was prepared and submitted to the Senate by Senator Cordon near the end of the debate on the Submerged Lands Act, "showing the true intent and effect of Senate Joint Resolution 13,"[71a] he specifically takes notice of the question, raised by the opponents of the resolution, as to whether the territorial extent of the jurisdiction of the United States went to the historic boundaries of the States in the Gulf of Mexico.

In reply to this contention of the opponents of the bill, Senator Cordon very carefully stated the intention of Congress in Senate Joint Resolution 13 to declare the territorial extent of the jurisdiction of the United States so as to make the grant effective out to historic boundaries:[71b]

> "If any doubt remains on this question of whether that part of the marginal belt included within the definition of 'lands beneath navigable waters' in Senate Joint Resolution 13 is a part of the territory of the United States and subject to the authority of Congress, the doubt

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[71a] 99 Cong. Rec., 4382.

[71b] *Id.*, 4385.

will be removed by the terms of this joint resolution. *No one will question the right of the Congress to declare the territorial extent of the jurisdiction of our Nation.* By its definition of 'lands beneath navigable waters' *Senate Joint Resolution 13 recognizes that the area* within the three-mile limit or *within such greater distance as a State's seaward boundary existed 'in the Gulf of Mexico* or any of the Great Lakes *at the time such State became a member of the Union,* or as heretofore approved by the Congress' *is within the territory of the States and the United States.* This assertion of congressional policy will confirm the fact that *such area is within the jurisdiction of the United States, and therefore it is subject to legislation by the Congress.* The future existence and control of proprietary rights and uses of the lands and resources within this area are matters which Congress may determine. If the effect of the Court decisons is to say that proprietary rights now exist in the national sovereign, they may be transferred to the States subject to the reservations of constitutional political powers in the Federal Government. If the effect of the Court decisions is to say that proprietary rights do not now exist in the area, *there can be no doubt but that Congress may by this legislation establish such rights. That is why both of the terms 'established' and 'vested' are used in Senate Joint Resolution 13.*"

This statement leaves no doubt that Congress by the Submerged Lands Act unquestionably intended to declare and determine that the territorial extent of the jurisdiction of the United States included the area within Texas' historic three-league boundary,

so as to make the grant to Texas effective to that boundary.

Congress not only has the power to dispose of property belonging to the United States, but it also has the power to declare and determine the territorial jurisdiction of the United States in order to make such disposition effective. It plainly intended to exercise both powers in the Submerged Lands Act to the extent necessary to carry out its purpose of transferring property rights to Texas to its historic three-league boundary.

C. CONTEMPORANEOUS CONSTRUCTION OF THE ACT ACCORDS WITH THE INTENT TO GRANT THREE LEAGUES TO TEXAS.

1. *Contemporaneous Construction by Federal Officials.*

In 1953, at the request of the Eisenhower administration, and of the President himself, the 83rd Congress passed both the Submerged Lands Act and the Outer Shelf Act as administration measures. These measures define the property rights and jurisdiction of the States and Federal Government in the respective areas. Naturally, the various departments of the Executive which were to be affected by the Act participated in drafting and steering through both acts as a part of the President's program.

If there is doubt as to the meaning of the Act, the contemporaneous construction placed upon it by those who participated in its drafting, and

who therefore had the terms of both the Submerged Lands Act and the Outer Shelf Act fresh in their minds is entitled to great weight."[73]

The Secretary of Interior was authorized to administer the Shelf Act, and in doing so, he was given numerous duties which require construction of the two Acts, especially with reference to the line of demarcation between the State and Federal property rights in the Continental Shelf.

The contemporaneous construction of the Act by officials in the Department of Interior was that it granted Texas property rights in the subsoil and seabed extending three leagues from coast, and that the federally-administered outer shelf began at the terminus of Texas' three-league boundary.

In the *Five Per Cent* cases, 110 U. S. 471, 484, the Court said:

> "The conclusion to which the court is brought upon a consideration of the language of the statutes relied on, and of the nature of the subject to which they refer, accords with the contemporaneous and uniform construction given to them by the executive officers charged with the duty of putting them in force. If the court had a doubt of the true meaning of their provisions, this practical construction would be entitled to great weight."

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[73] 2 Sutherland, *Statutory Construction*, Sec. 5103; Davis, *Administrative Law*, Sec. 56 (1951); Pike and Fisher *Administrative Law Digest*, Sec. 2(c) 5; *Edward's Lessee v. Darby*, 25 U. S. 206, 210; *Armstrong Co. v. Nu-Enamel Corp.*, 305 U. S. 315, 330.

Secretary of the Interior Douglas McKay participated in the hearings on the Act and stated that three leagues was the historic boundary of Texas and that the grant would extend to that distance in the case of Texas.[74]

This was the consistent contemporary construction of the Act by Secretary McKay in the administration of the Shelf Act applying to lands seaward of those granted to Texas by the Submerged Lands Act.

Section 6 of the Outer Continental Shelf Lands Act provided for validation of pre-existing State leases outside of the historic State boundaries upon application of the State lessees. Sub-section 6(e) provided that in cases where the existing State lease included lands both inside and outside of the historic State boundaries, the Secretary of the Interior was authorized to validate only that portion of a lease outside such boundaries. It directs that "the provisions of this section shall apply to such lease only insofar as it covers lands of the Outer Continental Shelf."

In carrying out this administrative function, it became necessary for the Secretary of the Interior to determine what leases were to be validated under Section 6. The Secretary applied the three-league boundary of Texas as the line of demarcation between State and Federal lands.

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[74] Hearings on S. J. Res. 13 before the Senate Committee on Interior and Insular Affairs, 83rd Cong., 1st Sess., 529, 535. Hearings on H. R. 2948 before Subcommittee No. 1, House Committee on the Judiciary, 83rd Cong., 1st Sess., 181.

In an official publication, the Department of the Interior stated:

> "According to section 6 of the act, the lessees, under leases issued by the States of California, Louisiana, and Texas, embracing all or part of the lands in the outer Continental Shelf, or outside of the 3 geographical mile line for Louisiana and California and *3 marine league line for Texas*, were required to apply to the Bureau of Land Management for continuation of such leases. To date four hundred and four State leases have been filed in this office to conform to section 6 of the act." [75]

The Secretary of the Interior provided a separate form to be used by the Division of Cadastral Engineering for reports on validation of pre-existing State leases which covered lands off the coast of Texas wholly outside the historic boundary, and the form contains the following:

> "The lease area is situated in the Gulf of Mexico on the outer continental shelf off the shore of the State of Texas. Available data indicate that the nearest point on the boundaries of the tract is ..... [feet] seaward from a line which is *three marine leagues* from the coast, *said line being considered as the outer limit of the submerged lands of the State of Texas.*" [76]

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[75] Bureau of Land Management, *Our Public Lands*, Vol. 4, No. 2, April, 1954, article by Lewis E. Hoffman, Chief, Division of Minerals.

[76] Dept. of Interior Form No. 51291.

Memoranda dealing with leases covered by subsection 6 (e), which were bisected by the dividing line between State and Federal property, contain the following:

> "The lease area is situated in the Gulf of Mexico off the shore of the State of Texas. Available data indicate that the area is crossed by a line which is *three marine leagues* from the coast, which line is considered as the outer limit of the submerged lands of the State of Texas."[77]

All new leases executed by the Secretary on the Outer Continental Shelf off the coast of Texas have been located seaward of the Texas three-league boundary line.

Under Secretary of the Interior Ralph A. Tudor, acting as Secretary in the absence of Mr. McKay, and after a question had been raised as to the Department's position in this matter, issued an official statement as follows:

> "There seems to be some misunderstanding of the position of this department with reference to the off-shore boundary of Texas.
>
> "The President has made his position abundantly clear. Furthermore, before the Senate committee at the time the Submerged Lands Bill was passed, Secretary McKay was asked by Senator Daniel if he would 'say something about his understanding of the Texas three-league boundary.'
>
> "Secretary McKay replied: 'That is what I want to say. I am with Texas on that, three leagues to sea.

[77] Dept. of Interior Files, O.C.S. 0016, 0017.

> '. . . I mean the three-mile limit as far as my state is concerned. I mean three leagues, as far as yours, sir, that is, Texas and Florida.'
>
> "This Department has taken no position contrary to that statement. It is not anticipated that any area within the three-league limit will be offered for lease by this department in connection with the proposals for leasing which are now being advertised."[78]

The Department of the Interior was notified in advance by mail each time that the State of Texas advertised leases for sale within the three-league boundary, many of which were beyond three miles, and no protest was made. The Department of Interior and State officials worked together to see that their leases respected the common boundary line of three leagues off the coast of Texas.[78a]

2. *Contemporaneous Construction by the President of the United States.*

Upon signing the Submerged Lands Act on May 22, 1953, President Eisenhower said:

> "I am pleased to sign this measure into law recognizing the ancient rights of the State in the submerged lands *within their historic boundaries.*"[79]

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[78] Statement on Submerged Lands, July 20, 1953. Department of Interior, Office of the Secretary, Information Service.

[78a] See affidavit of Bill Allcorn, Commissioner of the General Land Office of the State of Texas, Appendix G.

[79] New York Times, May 23, 1953, p. 1.

More than a year after the bill was signed, a question was raised as to whether Attorney General Herbert Brownell would recognize three leagues as the historic boundary of Texas and the extent of the grant to that State. Senator Price Daniel of Texas conferred with President Eisenhower at the White House on July 15, 1954, and then stated that the President "had assured him he held the position that Texas owned the submerged lands extending three leagues, rather than three miles, into the Gulf of Mexico." He told reporters after his White House visit that President Eisenhower authorized him to say there was no change in the President's position and that he still believed Texas had title to the full three leagues.[80]

On July 20, 1954, the Associated Press reported as follows:

> "A presidential aide . . . said President Eisenhower made his position perfectly clear last week in talking with Senator Daniel of Texas. The aide added: 'The President always has supported Texas' claim to its historic boundary, and that is three leagues.'"[81]

The New York Times reported that at a Presidential press conference on July 21, 1954, the following question was asked:

> "EDWARD JAMIESON Of the Houston Chronicle—Mr. President, last week Senator Daniel after seeing you, quoted you as saying that you felt and recognized the ten and one-

[80] New York Times, July 16, 1954, p. 6.
[81] Dallas Morning News, July 21, 1954, p. 6.

half mile limit of the offshore in Texas. Since then there have been some statements by some other people added, creating some confusion. Has your Administration any intention of changing the historic three-league boundary in the Gulf of Mexico?

The President's answer was reported as follows:

"A.—Let him say again, back in 1946 or 1947, as he recalled, he had seen a group of papers that seemed to him to be furnishing conclusive evidence that the property title to the so-called tidelands to historic boundaries belonged to the States. He had taken that view then; he had never had any reason to change it.

"He had supported that view, and by no word or action that he knew of, had he ever implied modification of that idea. No one had ever brought forward an argument that he thought was valid against it.

"He still supported it, and if there was any confusion, it certainly was in somebody else's mind, not his, on that point."[82]

On November 7, 1957, the President continued to recognize and adhere to the historic three-leagues for Texas in the Gulf of Mexico as shown in a letter addressed to Governor Price Daniel as follows:

"In further response to your telegram of October twentieth, the State of Texas, in my view, should have the right to explore and exploit the submerged lands extending seaward

[82] New York Times, July 22, 1954, p. 12.

of the Texas coastline for a distance of three marine leagues into the Gulf of Mexico."[83]

3. *Contemporaneous Construction by Congress.*

Soon after the Submerged Lands Act was signed, the same congressional committees which had reported favorably on the Act made favorable reports on the Shelf Act which, by its terms, covers the remainder of the continental shelf lying outside the States' historic boundaries.

The House Judiciary Committee reported on the Outer Continental Shelf Bill without additional hearings since it had already considered the matter in connection with the Submerged Lands Act. However, the Senate Committee on Interior and Insular Affairs conducted extended hearings. Throughout these hearings, and in the committee report, it was consistently recognized that the historic three-league boundary of Texas marked the grant to Texas in the Submerged Lands Act, and that the innermost line of the Outer Shelf Act commenced three leagues from the Texas coast. At least thirty times the three-league or 10½ mile distance was referred to in the hearings as the extent of the transfer made to Texas by the Submerged Lands Act.[84]

There was introduced in the Senate Committee hearing a survey of estimated petroleum reserves in the outer shelf, prepared by the United States

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[83] Copy of the telegram from Gov. Daniel to Pres. Eisenhower and the full text of Pres. Eisenhower's reply are included as Exhibit H.

[84] See Hearings, Senate Committee on Interior and Insular Affairs, on S. 1901, 83rd Cong., 1st Sess.

Geological Survey, which contained eight tables showing wells, revenues, and other data seaward of "traditional state boundaries." In each instance the totals were computed on the basis of using the three-league boundary as the dividing line.[85]

In the Senate committee report on the Outer Continental Shelf Lands Act, the total area of the outer shelf is figured on the basis of Texas having received a grant to three leagues, and the same is true of the committee's report concerning the estimate of reserves by the Geological Survey. The Senate committee referred to "the 10½ mile line off the coast of Texas."[86]

In the House debate undisputed statements were made recognizing that the grant in the previously enacted Submerged Lands Act extended Gulfward three leagues or 10½ miles in the case of Texas.

> "Congressman Graham [of Pennsylvania sponsor of the Outer Continental Shelf Bill, H. R. 5134, and member of the House Judiciary Committee]:
>
> "We decided, as you know, the territorial limits, the historic boundaries extending 3 miles out; and, due to the foresight and great judgment of those who created the Republic of Texas, they took care of themselves to 10½ miles. In that connection, after we had taken care of that we decided in title 3 that the Continental Shelf

[85] Hearings on S. 1901, before the Senate Comm. on Interior and Insular Affairs, 83rd Cong., 1st Sess. 710-721.

[86] Report No. 411, to accompany S. 1901, Senate Comm. on Interior and Insular Affairs, 83rd Cong., 1st Sess., p. 5—June 15, 1953.

that extends out from 90 to 120 miles should become the property of the Federal Government, and that comprises 90 percent of all the area in which oil can be drilled for. Ten percent remains within the confines of the original State historic boundaries."[87]

Other statements in the House were:

"Mr. Yates: In other words, this bill deals only with the portion of the Continental Shelf outside that area?

"Mr. Wilson: Beginning at the outer edge of the historic boundary of the States, which is 3 miles only except for the States of Texas and Florida, and on out."[88]

Mr. Jones of Illinois:

"I think our activities in connection with legislating on this important measure should be confined exclusively to that which we originally started out to accomplish, to-wit, to establish the boundaries of the States over which we have this existing controversy which, I understand, includes the 3 mile limit and a 10½ mile limit for the States of Texas and Florida. We should adopt a hands-off policy as it applies to submerged land referred to as the Continental Shelf —I mean by that, that the States should confine their control over submerged lands strictly to what we started out to do."[89]

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[87] Excerpt from House debate on H. R. 5134, Outer Continental Shelf Bill, on the floor of the House, May 13, 1953, 99 Cong. Rec., 4882.

[88] 99 Cong. Rec., 4889.

[89] *Ibid.*

Both the House and the Senate committee reports refer to the Outer Continental Shelf Lands as being seaward of *historic* state boundaries or seaward of the *original* state boundaries.[90]

Historic state boundaries are referred to as the line of demarcation forty-six times in the House debates and twenty-nine times in the Senate debates on the Outer Continental Shelf Lands Act.[91]

4. *Contemporaneous Construction by the States.*

The State of Texas, after passage of the Submerged Lands Act, advertised 311 tracts for lease in the Gulf of Mexico within the three-league boundary and beyond three miles from shore, and 165 leases were purchased at public bids for a total sum of more than $20,000,000 bonus. Nine separate sales were held between 1953 and 1958.[92] Notices were mailed to the Department of the Interior on all of these sales, and no protests were made.[93]

The State of Texas and its lessees construed the Act immediately after its passage as did the Department of the Interior, the President and the Congress.

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[90] Report No. 411, to accompany S. 1901, Senate Committee on Interior and Insular Affairs, 83rd Cong., 1st Sess., p. 5 (1953); Report No. 413 to accompany H. R. 5134, House Committee on the Judiciary, 83rd Cong., 1st Sess., p. 3 (1953).

[91] 99 Cong. Rec. 4877-4895, 6961-7265.

[92] September 1, 1953; December 1, 1953; September 7, 1954; May 3, 1955; September 6, 1955; July 3, 1956; December 4, 1956; June 4, 1957; and March 4, 1958.

[93] See Affidavit, Bill Allcorn, Commissioner General Land Office of Texas, Appendix G.

This same construction of the Act as granting three leagues to Texas was made by the States of Alabama and Rhode Island in the case of *Alabama v. Texas, et al.*, 347 U. S. 272. See Point VIII (infra, 150).

D. CONGRESS AND THE PRESIDENT, AS THE POLITICAL BRANCHES OF THE NATIONAL GOVERNMENT, HAVE DETERMINED FAVORABLY TO TEXAS ALL POLICY QUESTIONS, BOTH FOREIGN AND DOMESTIC, INVOLVED IN A THREE-LEAGUE PROPERTY GRANT TO TEXAS, AND THEIR DETERMINATION OF POLICY IS BINDING.

The Government contends in its brief that this Court should decide against the States on the proposition that seaward boundaries are a matter of foreign policy; that the Court is bound by "all declarations and determinations on foreign affairs" made by the Executive; that the judicial task in the case at bar is to discover what position the Executive has taken; and that Secretary Dulles' letter to Attorney General Brownell is "enough to conclude the matter here."

The Government's precise contentions are:

> "The courts, therefore, are bound to accept as correct and conclusive all declarations and determinations with respect to foreign affairs and foreign policy, made by the Executive Branch of the Government by formal rulings or official action taken in conducting the foreign

affairs or formulating the foreign policy of the nation."[94]

* * * *

"The question in such a case is not of discovering an independent fact, but rather of learning what position has been taken by the Government on the subject." [95]

* * * *

"We submit, however, that the Secretary's statement [referring to the Dulles letter] alone is enough to conclude the matter here."[95a]

The exact effect of the Government's contentions is not clear. If the Government means to say that this Court must abdicate its judicial function of determining what the legal issues are and how they should be decided, then the Government's contention is so plainly wrong that no argument is needed to reveal its fallacy.

For the reasons we have stated (Point I, p. 7) foreign policy does not enter into the decision of the issues in this case. However, if foreign policy must be considered, then it is clear that all questions of policy, both foreign and domestic, have been decided in favor of the States through the regular processes of the political branches of the Government.

These questions of policy were for Congress to decide. There, as we have shown in our discussion of the legislative history of the Submerged Lands Act, all questions of domestic and foreign policy were expounded and argued at length in the com-

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[94] Government Brief, 127-28.
[95] *Id.*, p. 130-31
[95a] *Id.*, p. 132.

mittee hearings and in the debates in both Houses of the Congress. Specifically with reference to Texas, it was repeatedly and unequivocally stated that the purpose of the Act was to transfer rights to Texas out to the boundary it had established in 1836 at three leagues in the Gulf. Congress decided that this transfer should be made, rejecting all of the arguments of domestic and foreign policy that the Government now submits in its brief.

Before Congress started consideration of the bill, during the Congressional debates, and after the bill had been passed by Congress, President Eisenhower consistently and emphatically took the position that *as a matter of policy* he favored the transfer of rights to Texas to three leagues in the Gulf. In the statement that he made at the time he approved the Submerged Lands Act, and in subsequent statements, he gave his interpretation of the Act as being a grant to Texas to its three-league historic boundary.

In view of the clear-cut statements by the President, it is, to say the least, bewildering to find the Solicitor General arguing that the Secretary of State can in effect repudiate the position of his superior, the President. If any person can authoritatively state the policy of the Executive branch of the Government, surely it should be the President himself.

The regular procedure for determining policy is by the official action of the political branches. The official action of Congress was its passage of the Submerged Lands Act,[95b] deciding all issues of policy

[95b] See supra, 99 Cong. Rec. 4382-85.

in favor of the States. The official actions of the Executive were the public announcements of the President before, during, and after the passage of the Act. They are binding on the parties and upon this Court.

III.

UNDER THE ACT TEXAS WAS GRANTED PROPERTY RIGHTS IN THE SUBSOIL AND SEABED OUT TO ITS HISTORIC THREE-LEAGUE BOUNDARY, BECAUSE PRIOR TO AND AT THE TIME IT ENTERED THE UNION, TEXAS HAD AN EXISTING THREE-LEAGUE GULFWARD BOUNDARY.

The Government has conceded that the Republic of Texas on December 19, 1836, (I *Laws, Republic of Texas*, 133) enacted a law providing as follows:

> "AN ACT to define the Boundaries of the Republic of Texas.
>
> "Sec. 1. Be it enacted by the senate and house of representatives of the republic of Texas, in congress, assembled, That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico *three leagues* from land, to the mouth of the Rio Grande, ..."

The Texan Boundary Act was carried forward in successive editions of Texas law.[98]

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[98] See infra p. 100, note 174a.

The Submerged Lands Act contains no requirement that Texas must have occupied and used the submerged area for a prescriptive period; that the United States must have recognized Texas' historic three-league boundary during the time Texas was a Republic; or that such boundary must have been one recognized in "International law" or by the "Family of Nations", in order for the boundaries to have "existed" within the meaning of Section 2 and the last sentence of Section 4 of the Act.

Though the Government has acknowledged that the Texas Republic's December 19, 1836 Act declaring her three-league seaward boundary was in existence prior to Texas' entry into the Union (Gov't. Br., p. 188), the Government seeks to avoid that indisputable fact (which is all that Texas is required to establish in this case) by arguing:

1. That the Republic took no steps to effectuate jurisdiction within its seaward boundary;
2. That the United States never recognized or acquiesced in the three-league boundary; and
3. That the three-league boundary was not recognized in international law.

Despite the fact that these arguments are immaterial, each of them will be refuted. Historic evidence will be supplied to establish that Texas did effectuate its claim (Point IIIA); that the United States did recognize and acquiesce in the Texan three-league seaward boundary (Points IIIB and IIIC); and that the three-league boundary was not invalid and was one which the Republic of Texas as an independent sovereign had a right to assert under international law (Point V).

A. THE REPUBLIC OF TEXAS DID IN FACT MAINTAIN SOVEREIGNTY, JURISDICTION, USE, AND CONTROL OVER THE AREA WITHIN ITS THREE-LEAGUE BOUNDARY.

From 1835 to annexation in 1845 Texas exercised its jurisdiction and control over that portion of the Gulf of Mexico within its boundaries three leagues from shore. Indeed, the Republic of Texas did not enter the American Union in 1845 without assurances that the United States Navy would assume the responsibilities of the Texas Navy in the Gulf of Mexico.[97] During this period, prior to annexation, the Navy of the Republic of Texas actually controlled the entire Gulf of Mexico and patrolled and defended the waters of the Gulf of Mexico within the three-league boundary.[98]

An examination of the Constitution and laws of the Republic of Texas, together with documents contained in the Texas Archives, and reference to historic works and newspaper accounts, establishes beyond a doubt that Texas used, maintained and conover, the area within its three-league historic boundaries.[99]

Even prior to the formal Declaration of Independence on March 2, 1836, the Provisional Government of Texas had established a Committee for Na-

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[97] 2 Garrison, *Texan Diplomatic Correspondence*, 242, 260, 296, 311 and 314.

[98] See Appendix F, for a list of published accounts of the activities of the Texas Navy.

[99] Evidence of the exceptional importance attributed by the government of Texas to the exercise of jurisdiction and control of Texas' territorial belt will be found in the compilation of legislative action of the Provisional Government of Texas and the Republic of Texas, Appendix E.

val Affairs, which set up qualifications for grantees of letters of marque and reprisal and the duration and extent of their operations, and which also recommended purchase of navy vessels "... to cruise in, and about the bays and harbours of our coast."[100]

There were at least six regularly commissioned privateers that acted as a navy for Texas prior to its independence and which effectively aided the establishment of the Republic in keeping the coastal waters free for the essential supplies from New Orleans and in preventing the landing of Mexican troops.[101] The Committee on Military Affairs of the Provisional Government expressed, as early as November 19, 1835, the need to construct "... fortifications and works of defence, in Bays or Harbours ...". An ordinance establishing the Navy was passed on November 25, 1835,[102] and the first four vessels of war were purchased in January and February of 1836.[103]

The plans of the Provisional Government were to obtain "command of the Gulf, from Matamoras to New Orleans".[104] In January, 1836, the commander of the schooner *Invincible* was ordered: "To take command of said vessel of war and man and provide for a cruise against the enemy within the Gulf of

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[100] I Laws, Republic of Texas 561, 567-568.

[101] Dienst, Dr. Alex, *The Navy of the Republic of Texas, 1835-45*, 20-32 (1909).

[102] I *Laws, Republic of Texas* 588-589.

[103] Dienst, Dr. Alex, *The Navy of the Republic of Texas, 1835-45*, 32 (1909).

[104] I *Laws, Republic of Texas* 695, 729. See also p. 730, where it is stated the *Invincible* was to be purchased for ". . . the object of cruising in the Gulf, or about our coast . . . ."

Mexico or any of its waters, until further ordered . . ."[105] Courts of admiralty were established and acts passed providing for a coastal patrol for protection and collection of revenues to be derived from the area.[106]

After the Declaration of Independence and the establishment of the Republic, new laws were passed by the Texas Congress by which jurisdiction and control were exercised over the area within the seaward boundary of the Republic which was delineated in the Texas Boundary Act, approved December 19, 1836, as being three leagues from land. Examples of this were the passage of numerous acts establishing and making appropriations for the navy from the very beginning of the Republic until annexation.[107]

Because the navy was engaged in patrolling the coast to prevent the supplying of the Mexican Army by sea, it contributed greatly to the Republic's successful establishment and maintenance of independence.[108] As pointed out in the foreword to the work by Dr. Jim Dan Hill, *The Texas Navy*, p. vii: "The Navy was unquestionably largely responsible for the victory that Houston won at San Jacinto. It blocked reinforcements for Santa Anna. It forced him for

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[105] I *Laws, Republic of Texas* 754.

[106] I *Laws, Republic of Texas* 593-597, 669, 673-674, 683.

[107] I *Laws, Republic of Texas* 931, 1146-1193, 1355-1356; II *Laws, Republic of Texas* 129, 381-386, 765, 767-771, 813, 1018-1022; See Appendix E, p. 268.

[108] Hill, Jim Dan, *The Texas Navy*, 45-46, 54-55, 57. (Chicago, 1937).

lack of supplies to alter his plan of campaign at a crucial moment . . ."

Later, the Republic also passed laws governing the coasting trade,[109] confirmed the establishment of courts of admiralty,[110] *and, in setting up customs provisions and anti-smuggling measures, provided for revenue cutters to patrol the coast.*[111]

Regulations with respect to the use of pilots in the coastal waters extended out to fifteen miles.[112] Charting of the coast was an early project of the Republic, and a survey was carried out by Commodore E. W.

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[109] II *Laws, Republic of Texas* 479, 969, 1017, 1109.

[110] I *Laws, Republic of Texas* 1307; II *Laws, Republic of Texas* 521-525, 733-734, 998-999.

[111] "An Act for the protection of the revenue and other purposes . . . the collector of said port be authorized to appoint an inspector, whose duty shall be to guard and watch over the action and proceeding of all vessels and boats, and persons on board of either . . . and prevent smuggling, and all other frauds on the Revenue; and further, that the President be requested to instruct the Secretary of the Navy, to keep constantly employed, until otherwise provided for, one or more of the armed schooners now in commission, on the coast of Texas, from the mouth of the Sabine Inlet to the mouth of the Rio Bravo del Norte, for the protection of the Revenue, which vessel or vessels shall perform the service and duties of revenue cutters, in the same manner as similar services are performed by revenue cutters of the United States." February 5, 1840, Acts, 4th Cong. pp. 73-74; II *Laws, Republic of Texas* 247.

For other references to provisions with respect to customs and anti-smuggling measures see: I *Laws, Republic of Texas* 983-988, 1008-1016, 1315-1316, 1496; II *Laws, Republic of Texas* 209-225, 734-737, 812, 1111, 1134.

[112] II *Laws, Republic of Texas* 773-775.

Moore of the Texas Navy.[113] A chart of the entire coast was prepared by him and published in Philadelphia and New York in 1842, and was also published in England by the Admiralty.[114]

Texas ceased to depend entirely on privateers early in 1836. Four vessels of war, *Liberty*, *Invincible*, *Independence* and *Brutus*, were purchased in January and February of that year.[115]

William Kennedy, the British Consul at Galveston,[116] had this to say about the Texas Navy during

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[113] II *Laws, Republic of Texas* 113; Moore, Commodore E. W., *To the People of Texas*, pp. 48-49. Fisher to Thurston, March 20, 1837, Navy Papers, Texas State Archives.

An item in the July 14, 1841 issue of the *Telegraph and Texas Register* (which published all the laws and documents of the Texas Republic) reads:

> "The schooner of war, *San Antonio*, left Galveston on the 4th inst., for the Sabine Pass, having Com. E. W. Moore and several officers on board, for the purpose of commencing the survey of the coast. Col. G. W. Hockley was a passenger on board. We are glad to find this important work commenced. The officers of our Navy can not at this season be employed to better advantage than in this survey."

[114] Dienst, Dr. Alex, *The Navy of the Republic of Texas, 1835-45*, 93 (Temple,Texas, 1909).

[115] *Id.*, p. 32.

[116] Justin H. Smith, in his book, *The Annexation of Texas*, 80, footnote 8, (1911, corr. ed., 1941), states that Kennedy, an English agent, is the author of a valuable work on Texas. See also, Adams, E. D., *British Correspondence Concerning Texas*, 133-134.

the crucial period following the battle of San Jacinto in April 1836:

> "The vessels in the Texan service commanded the coast, and could have landed troops at any point."[117]

During 1836, while patrolling the Gulf Coast, the Texas Navy captured two American vessels engaged in carrying contraband and cargo.[118] General Hunt, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Texas, wrote to the American Secretary of State, Mr. Forsyth, August 4, 1837:

> "Texas is not disposed to yield to any foreign nation the privilege of her coast, involving the command of the Gulf of Mexico, nor can she concede them to the United States, unless in a treaty of union." [119]

In 1837, the Texas Secretary of the Navy directed the commander of the Texas Navy to cruise in the Gulf of Mexico and "seek the enemy wherever you may think you can find him."[120] In reporting on the cruise to the Navy Department, the commander of the Texas Navy reported the capture of three Mexican schooners and a British schooner thought to be

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[117] Kennedy, William, *Texas*, (London, 2d ed., 1841, reprinted Ft. Worth, Texas, 1925)

[118] Hill, *The Texas Navy*, 51, 53 (*Ships Pocket and Durango*).

[119] Kennedy, *op. cit. supra* n. 117, p. 660.

[120] Fisher to Thompson, May 23, 1837, Navy Papers, Texas State Archives.

carrying contraband.[121] In September, 1836, the Secretary of the Navy, in reporting to the President of Texas on the past operations of the Navy, was able to state:

> "At an early period of our struggle for National Independence, the importance of our Navy was fully developed. Invaded by a large force by land, and the natural productions of the country principally destroyed, we had to look abroad for the support of our army; and even, in a great measure, for the sustenance of the inhabitants of the country. But by the aid of our little fleet, we were enabled, so far to command the Gulf, as to keep the vessels of our enemy off our coast, and secure the introduction of supplies from abroad."[122]

In a letter in 1838, the Texas Secretary of State wrote the Texan representative to Great Britain, that "There have been no Mexican cruisers on our coast since August last. Our carrying trade is performed by vessels sailing under the United States Flag. No one a year ago could have foreseen the surprising increase of our commerce in so short a period. Of late

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[121] Thompson to Navy Department, Aug. 29, 1837, Navy Papers, Texas State Archives. See also Boyland to Secretary of Navy, Sept. 1, 1837, Navy Papers, Texas State Archives. A joint resolution of the 4th Congress (Texas), January 25, 1840, appropriated the sum of $3,840.60 as an indemnity for the capture and detention of the British schooner *Eliza Russell*, by the Texan armed schooner *Invincible*. II *Laws, Republic of Texas*, 420.

[122] Shepherd, acting Secretary of State, to the President of Texas, Sept. 30, 1837, Navy Papers, Texas State Archives.

about thirty vessels are often lying in the port of Galveston, seven of which are Steam Boats that ply between the Island and other places." [123] Seven vessels were acquired for the Texas Navy during 1839 and 1840.[124]

By 1840, the Texan Navy had gained command of the whole Gulf, and retained this control until its annexation to the United States. The Mexican press deplored the situation in a newspaper article in October, 1840: "The squadron of Texas dominates our Gulf Coast from the boundary of the U. S. to Cape Catoche in Yucatan." [125]

That the Texas Navy was successful, not only in keeping Mexican vessels out of the coastal waters, thereby preventing invasion by sea (the most accessible route) and in protecting the supplies coming in from New Orleans by the sea, but indeed achieved the high objective of "command of the Gulf" set for it by the government of Texas, is attested by records of the day. One writer about Texas in his book published in Philadelphia and New York in 1840 stated: "Texas now has a Navy that commands the whole Gulf, and Mexico dares not set a single armed vessel afloat beyond the limits of her own harbor." [126]

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[123] Irion, Secretary of State, to Henderson, March 20, 1838, 3 Garrison, *Texan Diplomatic Correspondence*, 851.

[124] A list of seven vessels acquired for the Texas Navy was enclosed in a letter by the British chargé d' affaires to the British Foreign Secretary: Elliot to Aberdeen, November 24, 1842, Adams, E. D., *British Correspondence Concerning Texas*, 133-134.

[125] Diario del Gobierno (Mexico City) for October 4, 1840.

[126] Moore, Francis J., *Maps and Description of Texas* 40 (Philadelphia and New York, 1840)

This position of control of the Gulf coastal waters was also recognized by such disinterested parties as the British minister to Mexico who wrote the British Foreign Secretary in a letter dated October 26, 1840: "There is actually a Texan squadron cruising on the coast, which may at any moment commence offensive operations, and the Mexican Government possesses not a vessel of the smallest description, not even a boat, to oppose them." [127] During 1843 the Texas fleet went to the assistance of the Government of Yucatan, which was then in revolt against the central government of Mexico, and again completely defeated the Mexican squadron, thus leaving the Texas Navy in undisputed possession of the Gulf of Mexico from Louisiana to Yucatan. Dr. Alex Dienst, a scholarly Texas Navy historian, whose work is thoroughly documented, has written: "Thus gloriously for Texas was the Yucatan expedition ended and the object of the cruise attained. The Texan Navy rode in triumph upon the Gulf, and Galveston and Texas were free from apprehensions of an attack or invasion from Mexico by sea." [128]

Upon annexation the responsibilities of the Texas Navy were transferred to the United States Navy.

"The vessels transferred were the ship *Austin* of 20 guns, the brig *Wharton* of 18 guns, the

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[127] Pakenham to Lord Palmerston, October 26, 1840, Adams, E. D., *British Interests and Activities in Texas*, 47 (1910).

[128] Dienst, *The Navy of the Republic of Texas*, 1835-45 134.

brig *Archer*, 18 guns, and the schooner *San Bernard*, 7 guns." [129]

Thus, the Texan Navy throughout the history of the Republic, and for a period of nearly eleven years, performed the traditional functions of the Navy of an independent nation. It also performed the same functions as the United States Coast Guard in protecting and collecting revenues, and of the U. S. Coast and Geodetic Survey in that it charted the coast of Texas. It made water commerce possible in the Gulf, as well as within three leagues, and without interference from foreign powers. It maintained complete dominion over the entire Gulf from Louisiana to Matamoros, Mexico, as well as to Yucatan and therefore it was able to and did maintain complete sovereignty, control, use and jurisdiction over and within Texas' three-league boundary.

The foregoing completely answers the contention in the Government's Brief at page 195 "that it does not appear that the Texas Republic took any steps to effectuate its claim of jurisdiction over three leagues of marginal sea." If the Court has any real doubt about the matter, then this is a fact issue which must be assumed against the Plaintiff for the purpose of this Motion for summary judgment on the pleadings.

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[129] *Id.* at 142.

B. THE UNITED STATES RECOGNIZED AND ACQUIESCED IN THE TEXAS REPUBLIC'S THREE-LEAGUE BOUNDARY PRIOR TO AND AT THE TIME TEXAS ENTERED THE UNION.

The United States recognized Texas as an independent Republic March 1, 1837.[130] That recognition was retroactive to Texas' establishment of an independent government.[131]

Evidence of the knowledge of the Texas Boundary Act and recognition of it and acquiescence in it appears throughout the history of the relations between Texas and the United States. The period up to and including the annexation of Texas will now be examined. The subsequent approval by Congress of Texas' three-league boundary is examined under Point IV (infra, 111). The recognition by other world powers is discussed under Point V (infra, 124).

1. *Prior to Recognition of the Republic of Texas by the United States on March 1, 1837.*

The United States was vitally interested in territorial claims of the Republic of Texas from the very outset of the revolution in Texas in 1835.

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[130] The plan for a general "consultation of all Texans" originated at public meeting held at Columbia in June and August, 1835. A committee was designated to make arrangements for elected representatives of every municipality in Texas to convene October 15, 1835. This was done and the provisional government of Texas began to function from that date. The first skirmishes of the revolution were taking place at this time. Yoakum, H., *History of Texas*, 2 Vols., New York 1855, esp. vol. I. pp. 354-379.

[131] See infra, p. 125.

Nothing short of an active and vital interest in all Texan affairs could have been expected of the United States, first because the revolution took place on the United States border, and second, because many of the Texas revolutionists were United States citizens who came to Texas to fight against Mexican tyrany.

It is utterly absurd to suppose, as the Government does, that the United States, which only a few years before had proclaimed the Monroe Doctrine, lacked interest in Texas' territorial claims. As a matter of fact, the United States Government watched Texan developments very closely. President Jackson's Message of December 21, 1836, to the House of Representatives, begins:

> "During the last session, information was given to Congress by the Executive, that measures had been taken to ascertain 'the political, military, and civil condition of Texas.' I now submit, for your consideration, extracts from the report of the agent who had been appointed to collect it, relative to the condition of that country." H. R. Exec. Doc., 24th Cong., 2nd Sess., Doc. No. 35, p. 1.

President Jackson then presented the considerations which should be taken into account before granting recognition. In the course of his remarks he stated: "The title of Texas to the territory she claims is identified with her independence. . ." Ten detailed reports dating from August 13, to September 14, 1836, of the Agents of the United States, were submitted with the message.[132]

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[132] H. R. Exec. Doc. 35, 24th Cong., 2nd Sess.

The Texas Boundary Act was introduced in the House of the Texas Congress on November 3, 1836.[133] The Government contends that because the Act was not passed until December 19, 1836, President Jackson, in his message to Congress of December 22, 1836, could not have known of it because of the slowness of communications during that period. (Gov't Br., p. 202). This argument ignores the fact that the Act was introduced 49 days prior to Jackson's message, ample time for the President to have gained intelligence of its pendency and probable passage. Certainly Jackson knew that Texas' boundary claims were of vital concern to the United States. The very tenor of his message is to that effect for he was warning the Congress that any recognition made by the United States would be identified with Texas' territorial claims. There was even more time for the President and the Senate to have acquired knowledge of the Texas Boundary Act prior to formal recognition on March 1, 1837.

William H. Wharton, the Texan Minister to the United States, left Texas shortly after November 22, 1836, nineteen days after the Boundary Act had been introduced in the Texas Congress, and arrived in Washington on December 19, 1836. He was in touch with various senators and congressmen, as well as the President, throughout the period prior to recognition. He was joined in his mission to the United States to secure recognition by Texan General Memucan Hunt early in 1837. Wharton was supplied with copies of the *Telegraph and Texas Register*, in

[133] House Journal, 1st Cong., 1st Sess. 116-117.

which all documents of the Texas Congress were published,[134] the Boundary Act appearing in the issue for December 27, 1836.[135]

Furthermore, Senator Walker read the Texas Boundary Act to the Senate prior to passage of the recognition resolution. Speaking during the discussion of the annexation of Texas on May 21, 1844, he referred to the 1837 resolution:

> "As the author of the resolution, before it was adopted, I read to the Senate the boundaries of Texas as described in her organic law . . ." (Cong. Globe, 28th Cong., 1st Sess., App. 549).

The Government has suggested, however, that Senator Walker may not have read all of the Boundary Act, particularly the three-league portion.

The Texas Act is very short, containing only one sentence, the boundary portion being:

> "Sec. 1. Be it enacted by the senate and house of representatives of the republic of Texas, in congress assembled. That from and after the the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico *three leagues* from land, to the mouth of the Rio

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[134] 1 Garrison, *Texas Diplomatic Correspondence*, 127-201, esp. pp. 141-142, 143-144, 157, 160, 170, 176, and 198. See House Journal, Republic of Texas, 1st Cong., 2nd Sess., 1836-37, pp. 31-32.

[135] *Telegraph and Texas Register*, Texas State Archives.

> Grande, thence up the principal stream of said river to its source, thence due north to the forty-second degree of north latitude, thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning: . . ." (I Laws, Republic of Texas, p. 133, December 19, 1836.)

The three-league seaward portion precedes that portion of the Act that the Government grudgingly admits might have been read by Walker. It is impossible to imagine a United States Senator omitting such an important portion of the boundary description in the act during an extended debate on the question of recognition. The conjecture that Senator Walker might have omitted the commencing words "beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land," shows to what an absurd position the Government has been driven. Senator Walker says he read "*the boundaries* of Texas as described in her organic law." The Government offers no proof that he did not read them. Therefore, it must be taken as established that he did read them as they appear in the Texas law.

The inescapable conclusion is that the United States knew of the Texas Boundary Act prior to its recognition of Texas.

As stated by Professor Sohn:

> "As the activities of the new State and of its legislature were under close scrutiny by the neighboring States and of other nations having trade interests in the Gulf of Mexico, and as the current boundary difficulties focused general

attention on the boundary claims of the State, it cannot be doubted that all the interested States had official knowledge of the 1836 Texas Act." Exhibit I, p. 156.

2. *Recognition Incident to Boundary Convention of 1838.*

Not only did the United States actually know of the specific provisions of the Texas Boundary Act when it recognized the Republic of Texas on March 1, 1837, but it also had the Act brought forcibly to its attention by the Convention for Marking the Boundary (between the United States and the Republic of Texas) concluded April 25, 1838.[136]

The Texas Boundary Act of 1836, after stating the boundaries, provided:

> "that the President be and he is hereby authorized and required to open negotiation with the Government of the United States of America, so soon as in his opinion the public interest requires it, to ascertain and define the boundary line agreed upon in said treaty." [Referring to the Treaty of 1819 between the United States and Spain.]

The Texas Commissioner, Memucan Hunt, was instructed by R. A. Irion, Secretary of State of the Republic of Texas, to follow the provisions of the Texas Boundary Act:

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[136] Ratifications were exchanged at Washington on October 12, 1838, and the proclamation made on October 13, 1838. 4 Miller, *Treaties and other International Acts of the United States of America*, 133-143.

"Each of the two governments from the beginning of their relations regarded the boundary fixed by the earlier treaties of the United States with Spain and with Mexico (Documents 41 and 60) as binding so far as concerned the line between the United States and the Republic of Texas. The Government of the United States was so informed by the representatives of Texas as early as January 11, 1837 (Garrison, *Diplomatic Correspondence of Texas*, pt. 1, 175); the attitude of that Government at no time varied in that regard (*Ibid*, 232, 279, 295); Indeed, the Government of Texas appointed a commissioner to run the line accordingly (*Ibid*, 252, Aug. 4, 1837; 279, Dec. 31, 1837). The boundaries of Texas, as claimed by that Government were *thus described in the instructions of March 21, 1838, from R. A. Irion, Secretary of the State of Texas to Memucan Hunt*, (Ibid, 318-20):

" 'The present boundaries of Texas as fixed by an act of Congress are as follows, viz.,—beginning at the mouth of the Sabine River and *running west along the Gulf of Mexico three leagues from land* to the mouth of the Rio Grande; thence up the principal branch of said river to its source, thence North to the 42nd degree of north latitude; thence along the boundary line as defined in the treaty between the United States and Spain to the beginning.'

"*That description of the boundaries of Texas was taken almost literally from the Texas Act of December 19, 1836*, 'to define the boundaries of the Republic of Texas'. . .(Laws of the Republic of Texas, I 133-134)." [136a]

[136a] 4 Miller, *Treaties and Other International Acts of the United States of America*, 135-136.

The Document File of the State Department is described by Mr. Hunter Miller, its official historian, as being very complete. His conclusions and observations can hardly be questioned by the Government. It is quite apparent that the United States was given explicit notice of the Texan Boundary Act during the negotiations on the treaty.

The provisions of the treaty specifically state that only a part of the boundary line between the United States and Texas had been agreed upon and that the remainder would be run and marked at a later date to suit the convenience of both contracting parties.

In Art. 2 of the 1838 Boundary Convention, it was provided:

> "And it was agreed that until this line shall be marked out as provided for in the foregoing article, each of the contracting parties shall continue to exercise jurisdiction in all territory over which its jurisdiction has hitherto been exercised, and that the remaining portion of said boundary line shall be run and marked at such time hereafter as may suit the convenience of both contracting parties, *until which time each of said parties shall exercise without the interference of the other within the territory of which the boundary shall not have been so marked and run, jurisdiction to the same extent to which it has been heretofore usually exercised.*"

The Government at page 203 of its brief said that the Boundary Convention of 1838 confirms its contention that "the United States had not recognized the Texas claim to a three-league boundary", stress-

ing the point that the boundary began on the Gulf of Mexico at the mouth of the river Sabine. Actually, the Convention provided that only "a portion" of the boundary between the United States and the Republic of Texas was to be marked.

Miller's report states:

> ". . .it is to be particularly observed, moreover, that this convention provided for the immediate demarcation of *only a portion* of the boundary between the United States and the Republic of Texas, namely, that 'which extends from the mouth of the Sabine, where that river enters the Gulf of Mexico to the Red River', a distance of less than 300 miles." [137]

More important, Miller records the fact that the Texas boundaries before the United States and Texas Commissioners were as stated in the Texas Boundary Act of December 19, 1836.[137a]

To summarize, the United States had actual knowledge of the Texas Boundary Act prior to recognition of the Republic. This boundary was brought specifically to the attention of the United States, in the Boundary Convention of 1838 where Texas' boundaries were expressly recognized on all unsurveyed portions within which Texas exercised jurisdiction. The Republic actually exercised jurisdiction over and controlled the entire Gulf of Mexico west of Louisiana and this territory included the

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[137] 4 Miller *id.* at 141.

[137a] 4 Miller *id.* at 163.

area within its seaward three-marine-league boundary.

3. *Annexation of Texas.*

That the boundaries declared by the Republic of Texas in 1836 were the boundaries of the Republic at the time of annexation and were again recognized and approved by the United States Congress is shown by many statements made during the negotiations and after annexation had been accomplished. In 1844 an attempt was made by the United States and the Republic of Texas to enter into a Treaty of Annexation. That Treaty of Annexation failed because the United States refused to assume the Republic's debt. [138]

In a speech by Senator Benton of Missouri, May 16, 18 and 20, 1844, during the negotiations on the unratified treaty, he said:

> "The Republic of Texas acts by its name, and passes itself to us in the whole extent of all the limits and boundaries which it asserts to be its own . . .
>
> ". . . The boundary is fixed, as much so as the most elaborate specification could make it. A law of the Texian Congress fixes the boundaries of the Republic of Texas . . . the fact is, the whole passes with the precise boundaries named in the law . . ." [139]

[138] 4 Miller *id.* at 697.

[139] Appendix to the Cong. Globe, 28th Cong., 1st Sess. 475.

On June 24, 1844, Senator Breese of Illinois delivered a speech in the United States Senate in which he said that:

> ". . . we have acknowledged the limits as defined in the act of the Texian Congress of 1836 . . . And why do I say so? Because we did, in 1837, with a full knowledge of these declared boundaries, acknowledge the independence of Texas as a state, with that act of her Congress then as now, in full force . . ." [140]

The debates and negotiations on annexation continued, however, and in 1845 Congressman Bowlin, of Missouri in a speech before the House, said that if Texas "is a free, sovereign, and an independent power, no one can question her authority over and within the limits of her domains." [141]

In a speech in the House, on January 24, 1845, Congressman Haralson, of Georgia, made the following statement:

> "The Texian Act of Congress, approved December 19, 1836, I have little doubt, defines correctly the boundary of that Republic." [142]

The diplomatic representatives of the Republic of Texas were instructed that the boundaries of the Republic were those declared in the Act of December 19, 1836, and that in the negotiations of treaties

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[140] Appendix to Cong. Globe, 28th Cong. 1st Sess., 540
[141] Appendix to Cong. Globe, 28th Cong., 2nd Sess., 94.
[142] *Id.*, at 195.

with other countries these boundaries were to be maintained and recognized. In his letter of instructions to the two Texan representatives commissioned to open negotiations for annexation, the Texan Secretary of State directed:

> "The limits of Texas being defined by act of Congress, you will be governed by that act in specifying its boundaries." [143]

It was understood during the proceedings leading up to annexation that the boundaries asserted by Texas were to be recognized and defended by the United States. That is in fact what happened, even to the extent of waging war with Mexico.

President James K. Polk wrote Andrew J. Donelson, the American chargé d'affairs in Texas, who had conducted the discussions with Texas regarding annexation, on June 15, 1845, to advise him in regard to the action to be taken if Mexico invaded Texas while the annexation proposal was pending, and in the course of his letter stated: "Of course I would maintain the Texian title to the extent which she claims it to be . . .". (Appendix G, Gov't. Br., pp. 405-408). The Government attempts at some length (Gov't. Br., pp. 229-233), to explain away this particular item of evidence of the recognition by the United States of the Texas Boundary Act by saying that Polk's letter to Donelson was not intended for publication and that it had not reached Donelson's hands in time to influence the Texas Congress then in deliberation on whether Texas

[143] Jones to Henderson and Van Zandt, Feb. 25, 1844; II Garrison, *Texan Diplomatic Correspondence*, 260.

would consent to annexation. This did not prevent Donelson from making his government's assurances known to the Texas convention before it approved the agreement on August 27, 1845.[144] A previous letter from President Polk to Sam Houston did have such an intended effect. At an earlier date, June 6, 1845, President Polk had written Sam Houston:

> "You may have no apprehensions in regard to your boundary. Texas once a part of the Union and we will maintain all your rights of territory, and will not suffer them to be sacrificed. I mention the question of your boundary because you allude to it in your letter. I assure you that it will be my duty as it will be my pleasure to guard your interest in that respect with vigilance and care." [145]

The correspondence between Polk and Donelson shows that the United States relied heavily upon Sam Houston to persuade Texas to accept annexation.[146]

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[144] 2 Laws, Republic of Texas, 1303.

[145] Polk Papers, Vol. 72, 1845, Library of Congress.

[146] Letter from Donelson to Polk dated March 18, 1845, Polk Papers, Vol. 71. 1845, Library of Congress, stated: "It is upon him [referring to Houston] that I mainly rely to bring the question [of annexation] to the earliest practical settlement." Our citations are taken from a microfilm made of the Polk Papers in the Library of Congress during 1949-1950. The Government indicates that these papers have been re-compiled since that date. (Gov't. Br., p. 230, footnote 71). If the Polk Papers have been re-compiled in recent years or even if some of these papers have disappeared, we will be glad to make available to the Court and the Department of Justice the original microfilm or photostats made therefrom to document the authenticity of the information given to the Court.

There is no question, of course, that many people disapproved the annexation of Texas and were particularly concerned over the western boundary of Texas which included a portion of the present State of New Mexico. However, in all the negotiations and discussions concerning the annexation of Texas, the three-league seaward boundary was never questioned. No protest was made by the United States State Department which was undoubtedly familiar with the Texas boundary and the progress of annexation. That portion of the annexation agreement concerning the adjustment of boundaries really pertained only to the land boundaries to the west of the present western boundaries of Texas.

The joint resolution for annexing Texas was passed by the Congress of the United States on March 1, 1845, providing:

> "That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new state, to be called the State of Texas.
>
> ". . . and [said State] shall also retain all the vacant and unappropriated lands lying *within its limits* . . ."

Thereafter a joint resolution by the Congress of Texas of June 23, 1845, consented to the incorporation, using the words "people and territory of the Republic of Texas." The annexation was completed by the United States Congress on December 29, 1845,[146a] after the constitution for the new State was

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[146a] However, all formalities were not completed until February, 1846, Smith, J. H., *Annexation of Texas*, 468 (New York, 1911 corr. ed. 1941).

submitted and approved as "in conformity to the provisions of said joint resolution" of annexation. (Appendix A, pp. 231, 232). This Constitution adopted by Texas "in accordance with the provisions of the joint resolution for annexing Texas to the United States" and so approved by the Congress of the United States, contained the following provision:

> "All laws and parts of laws now in force in the Republic of Texas, which are not repugnant to the Constitution of the United States, the joint resolution for annexing Texas to the United States, or to the provisions of this Constitution, shall continue and remain in force as the laws of this State, until they expire by their own limitation, or shall be altered or repealed by the Legislature thereof." [147]

This significant provision continued in effect the boundary act of December 19, 1836. The Boundary Act has been carried forward in successive editions of the laws of Texas and no protests were made by the United States on any of those occasions.[147a]

The Government argues (Gov't. Br., pp. 239-40) that because this provision was made subject to the United States Constitution and therefore to United States foreign policy, that it did not amount to an approval by Congress of the Texan Act of December 19, 1836.

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[147] 2 Gammel, Laws of Texas, Art XIII, Sec. 2 at 1299.

[147a] See e. g., Hartley, *Digest of the Laws of Texas*, Art. 1631, at 504; Oldham & White, *Digest of the Laws of Texas*, Art. 111, at 55; Paschal, *Laws of Texas*, Art. 438, at 192; I Sayles, *evised Civil Statutes of Texas*, at 296; I Gammel, *Laws of Texas*, at 1193.

This contention, based on the assumption that a three-mile territorial waters rule was then in effect, must be viewed in the light of subsequent actions of the United States dealing with the Texas Boundary Act.

The United States adopted the Texan Boundary Act at its own in subsequent Treaties and Conventions with Mexico. The foreign policy of the United States as to the boundaries in the Gulf of Mexico is set forth in those treaties, where the Texan Boundary Act was carried forward as the law of the United States, as well as of Texas, insofar as the three leagues is concerned. Thus the power to settle all questions of boundary that might arise with other nations in the annexation agreement was exercised in such a way as to fulfill the promises made to Texas by the United States before annexation.

Thus, the foreign policy expressed in 1848 in the Treaty of Guadalupe Hidalgo was not a reversal of, but instead a continuation of, the foreign policy of 1845 as expressed by President Polk when he assured Sam Houston that he would maintain Texas' "rights to territory" as previously established.

4. *Recognition of Texas' Three-League Boundary by Treaty of Guadalupe Hidalgo.*

War with Mexico resulted from the annexation of Texas. Defense of the Texas boundaries as fixed in the Texan Boundary Act of December 19, 1836, precipitated the war. Thereafter, these boundaries were followed in the Treaty of Guadalupe Hidalgo [148]

[148] Signed Feb. 2, 1848; ratifications exchanged May 30, 1848, proclaimed July 4, 1848; 9 Stat. 922-43; 5 Miller, *Treaties and Other International Acts of the United States of America*, 207-428.

in which President Polk made good his former promises to the people of Texas to preserve and protect the Republic's declared boundaries. Article V of this treaty provides:

> "The Boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, . . .
>
> ". . .
>
> ". . . The boundary line established by this article shall be *religiously respected* by each of the two Republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the General Government of each, in conformity with its own constitution."

This three-league provision is traceable directly to the Texan Boundary Act of December 19, 1836. President Polk instructed Nicholas P. Trist, the United States negotiator of the Treaty, to follow the Texan Act in carrying out his negotiations with Mexico. Trist stated:

> "[As] said object stands in said instructions, specifically stated and expressed, it was the object of prevailing upon Mexico to 'agree that the line shall be established *along the boundary defined by the Act of Congress of Texas, approved December 19, 1836 . . .*' " [149]

The Texas Boundary Act is again specifically referred to by Trist in other portions of his notes.[150]

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[149] Papers of Nicholas P. Trist, Vol. 33, Miscellaneous, Library of Congress, 1917, p. 62071.

[150] See pages 62077, 62078.

Thus there can be no question as to the source of the three-league provision in Article V of the Treaty.

The successive steps in the negotiations illustrate the fact that no one disputed the three-league provision at any time.

Article IV of the first American projet of the treaty as presented to the Mexican Commissioners provided in part: [151]

> "The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues from land opposite the mouth of the Rio Grande, . . ."

The Mexican Government countered with the following proposed provision: [152]

> "The boundary line between the two Republics *shall commence at a point in the Gulf of Mexico three leagues from land, opposite to the middle of the Southernmost inlet into Corpus Christi Bay;* thence, through the middle of said inlet, and through the middle of said bay, to the middle of the mouth of the Rio Nueces; . . ."

The disagreement between the two nations concerned the land area between the Rio Grande and Nueces Rivers and not the three-league Gulfward portion of the Texas boundary. Negotiations failed and hostilities were resumed.[153]

Trist, in dealing with the Mexican Commissioners, had made counter-proposals which would have set-

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[151] 5 Miller, *id.* at pp. 265, 281.
[152] 5 Miller, *id.* at p. 288.
[153] 5 Miller, *id.* at p. 289.

tled for less than Texas' declared boundaries, and Polk, upon hearing of this recalled him. Polk stated his views in his diary [154] as follows:

> ". . . Mr. Trist had exceeded his instructions, and had suggested terms to the Mexican commissioners which I could not have approved if they had agreed to them. I can never approve a Treaty or submit one to the Senate, which would dismember the State of Texas, and Mr. Trist's suggestion, if agreed to, would have done [this] by depriving that state of the country between the Nueces and the Rio Grande."

Negotiations were resumed by Trist (who ignored his recall), and once again the Mexican Government instructed its Commissioners in part as follows: [155]

> "4. The dividing line between the two Republics *shall begin at the Gulf of Mexico at a distance of three leagues from the land at a point opposite the mouth of the Rio Bravo del Norte.*"

The controversy between the Mexican Government and the United States over the provisions of Article V centered around the location of the terminus of the boundary between the two countries on the coast of California. After negotiations and discussions regarding the location of this point on the west coast of California, the Mexicans submitted

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[154] Polk's Diary, III, 196-97.

[155] 5 Miller, *Id.* at 299.

their projet of Article V, which read in part as follows: [156]

> "Article 5. The dividing line between the two Republics *shall commence in the Gulf of Mexico three leagues from land in front of the mouth of the Rio Bravo del Norte, . . .*"

Mr. Hunter Miller, the meticulous State Department historian, traced the three-league provision in Article V of the Treaty of Guadalupe Hidalgo to the Texas Boundary Act of December 19, 1836. He pointed out:

> "By the instructions to Trist of April 15, 1847, . . . the acquisition of Lower California while 'of the greatest importance' was not a sine qua non; and on the basis that Lower California was not embraced in the treaty, the instructions precluded Trist from agreeing to any boundary article less advantageous to the United States than the following:
>
> "The boundary line between the two Republics *shall commence in the Gulf of Mexico three leagues from land* opposite the mouth of the Rio Grande . . ."[157]

Mr. Miller footnotes his statement as follows:

> "See the Texas Act of December 19, 1836, quoted in vol. 4, p. 136. See also Manning, Diplomatic Correspondence of the United States, 1837-1860, VII, 31-32, 294."

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[156] 5 Miller, *Id.* at 325.
[157] 5 Miller, *Id.* at 315.

In Volume 4, Miller, at the page indicated in the footnote above quoted, says in part:

> "... The boundaries of Texas as claimed by that Government, were those described in the instructions of March 21, 1838, from R. A. Irion, Secretary of State of Texas, to Memucan Hunt, ..."
>
> "The present boundaries of Texas as fixed by an act of Congress are as follows: viz— *Beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land to the mouth of the Rio Grande;* ...
>
> "*That description of the boundaries of Texas was taken almost literally from the Texan act of December 19, 1836*, 'to define the Boundaries of the Republic of Texas' ..."

The above historic facts are indisputable and leave no doubt whatsoever as to the source of the three-league provisions in the Treaty of Guadalupe Hidalgo. To make doubly sure of this, an independent investigation has been made in Mexico by Professor Santiago Oñate. (See Exhibit III, *infra*, page ___). This investigation confirms the fact that the three-league provision originated with the Texan Act of December 19, 1836 and that President Polk insisted that the Texan Act should be followed in the treaty negotiations.

5. Recognition by Other Treaties and Conventions.

The Treaty of Guadalupe Hidalgo included a map made by Disturnell, which was attached to the treaty

and made a part thereof. Due to the lack of accurate information concerning the location of the present City of El Paso, Texas, and the other points used to locate the boundary line along the southern border between El Paso and the California coast, Disturnell's map contained an error which gave rise to disputes between the American and Mexican boundary Commissioners.

It was therefore necessary, in order to settle the dispute, to negotiate the Gadsden Treaty.[158]

Article V of the Treaty of Guadalupe Hidalgo, insofar as the three-league portion is concerned, was carried forward in the Gadsden Treaty. Article I of the latter treaty provided:

> "The Mexican Republic agrees to designate the following as her true limits with the United States for the future, retaining the same dividing line between the two Californias, as already defined and established according to the 5th article of the treaty of Guadalupe Hidalgo, the limits between the two Republics shall be as follows: *Beginning in the Gulf of Mexico, three leagues from land,* opposite the mouth of the Rio Grande as provided in the fifth article of the Treaty of Guadalupe Hidalgo, . . ." [159]

At no time during the discussions involving the Gadsden Treaty was any question raised concerning the three-league provision thus carried forward.

Pursuant to the agreement reached in the Gadsden Treaty, boundary Commissioners were appointed to

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[158] 10 Stat. 1031-37; 6, Miller, *Id.* at 293-437.
[159] 10 Stat. 1031.

survey the line between the two countries. The official report of the marking of this boundary, prepared for the Department of Interior, states:

> "Lt. Wilkinson, in command of the brig *Morris*, repaired at the appointed time to the mouth of the river and made soundings . . . to trace the boundary as the treaty required, '*three leagues* out to sea.' " [160]

Later, in line with Article V of the Treaty of Guadalupe Hidalgo a convention was entered into between the two nations providing for an international boundary survey to relocate the existing frontier line between the two countries west of the Rio Grande on July 29, 1882.[161] Although this Convention dealt only with the boundary west of the Rio Grande, its object was to replace and reset monuments fixed pursuant to the Treaty of Guadalupe Hidalgo and the Gadsden Treaty. No question was raised as to the three-league seaward boundary.

Another convention was agreed to November 12, 1884, for the same purposes.[162] Article I of this Convention states:

> "The dividing line shall forever be that described in the aforesaid treaty . . ." [referring to the Guadalupe Hidalgo Treaty.]

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[160] 1 Emory, *Report on the United States and Mexican Boundary Survey* 58 (Washington, 1857).
[161] 22 Stat. 986.
[162] 24 Stat. 1011.

There have been consistent and repeated affirmations of Article V of the Treaty of Guadalupe-Hidalgo throughout a long period of United States history. This work was accomplished pursuant to congressional acts,[163] and the United States recognized and approved the three-league portion of Texas' historic boundary on many occasions throughout this course of dealing with Mexico during a period of over 100 years.

Subsequent conventions and extensions of prevoius conventions dealing with the location of the boundary line provided by the Treaties of Guadalupe Hidalgo and Gadsden were concluded in 1885,[164] and 1889.[165]

In an attempt to solve the problems occasioned by changes in the beds of the Rio Grande and the Colorado Rivers a Convention was agreed to March 1, 1889.[166] This Convention established an international boundary commission to deal with this problem. Again, it was necessary to extend the time for resurveying and relocating the existing frontier line on August 24, 1894.[167] This Convention again specifically referred to the relocation of the boundary fixed by Article V of the Treaty of Guadalupe Hidalgo. A subsequent extension for an additional year was

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[163] See Appendix C, *infra.*, p. 257.

[164] Additional Article extending time for resurveying existing frontier line between the two countries west of the Rio Grande, 25 Stat. 1390.

[165] Supplementary Convention extending time for resurveying existing boundary line between the two countries west of the Rio Grande, Feb. 16, 1889; 26 Stat. 1493.

[166] 26 Stat. 1512.

[167] 28 Stat. 1213.

agreed to on October 1, 1895.[168] Similarly, another extension for an additional year of the work of the boundary commission was agreed to November 6, 1896.[169] Three additional extensions of one year each of this authority were approved by Congress on October 29, 1897,[170] December 2, 1898,[171] and December 22, 1899.[172]

Because it became apparent that the problems caused by changes in the course of the rivers would continue, an indefinite extension of the authority of the international boundary commission was agreed to by both countries on November 21, 1900.[173] The work of the international boundary commission has continued since that date.

A further convention dealing with the problem of eliminating bancos [174] was entered into between the two nations.[175] This work has continued to the present day.

The three-league line established by the Treaty of Guadalupe Hidalgo, throughout all of the conventions concluded between the United States and Mexico dealing with boundary problems, has never in any way been challenged either by Mexico or the United

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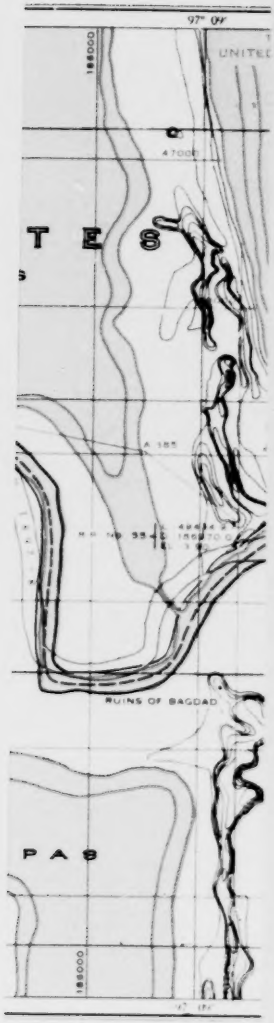
[168] 29 Stat. 841.
[169] 29 Stat. 857.
[170] 30 Stat. 1625.
[171] 30 Stat. 1744.
[172] 31 Stat. 1936, where the 1899 extension is mentioned.
[173] 31 Stat. 1936.
[174] A banco is a small tract of land on the opposite side of a river from the country to which it belongs, so existing by virtue of avulsive change in the river course.
[175] Convention for Elimination of Bancos in the Rio Grande from the Effects of Article II of the Treaty of Nov. 12, 1884, entered into Mar. 20, 1905. 35 Stat. 1863.



REDUCED SCALE

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of State, 1913).

States. In fact, the work of the boundary commission was expressly related to re-establishments and relocations of the boundary as provided in that treaty. As late as 1911 this three-league line was surveyed for the State Department and placed upon a chart, which appears opposite this page.

Additional recognition is found in House Executive Document No. 113, 71st Congress, 1st Session,[175a] (U.S.G.S. Survey Bulletin containing boundaries and statistical data) in which the following is said:

> "The area which Texas brought into the Union was limited as follows, as defined by the Republic of Texas, December 19, 1836 (see fig. 14):
>
> " 'Beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land to the mouth of the Rio Grande, ..."

IV.

UNDER THE SUBMERGED LANDS ACT, TEXAS WAS GRANTED PROPERTY RIGHTS IN THE SUBSOIL AND SEABED OUT TO ITS THREE-LEAGUE BOUNDARY, BECAUSE SUCH BOUNDARY WAS APPROVED BY CONGRESS PRIOR TO THE PASSAGE OF THE ACT.

The Submerged Lands Act, under the boundary definitions contained in Section 2 and the last sen-

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[175a] Douglas, *Boundaries, Areas, Geographical Centers, and Altitudes of the United States and Several States*, U. S. Department of Interior, Geological Survey Bulletin 817 (2nd ed. 1930) 36-37; House Document No. 113, 71st Cong., 1st Sess. Substantially the same statement appears in Bulletin Nos. 171, and 226 edited by Henry Gannett in 1900, and 1904, respectively and in the 1923 edition (No. 619) of the Douglas Bulletin.

tence of Section 4, granted seabed-subsoil property rights beyond three miles and as far as three leagues in the Gulf of Mexico to a State meeting either of two conditions: (1) Where in any case a State's "boundary as it existed at the time such State became a member of the Union, or (2) as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles."

It has been shown beyond question that Texas had an existing three-league boundary prior to and at the time it entered the Union, and the grant to Texas may be rested on that basis alone.

However, in Point III-B, in showing the United States' recognition of the Texan Boundary Act by numerous treaties and conventions, Congressional approval of Texas' three league boundary prior to the passage of the Submerged Lands Act has been demonstrated. Therefore, there is no need to repeat here all of those Congressional approvals, commencing with annexation, the approval of the Texas Constitution, the Treaty of Guadalupe Hidalgo, the Gadsden Purchase, and continuing on down to date through the activities of the International Boundary Commission which have been supported and maintained by the Congress.

Not only has the Senate, with the approval of the President, ratified those treaties and conventions, but the House of Representatives has lent its approval by passing many appropriation acts in support of those treaties and conventions.[176] Congressional ap-

[176] For list of congressional appropriation acts see Appendix C, p. 257.

proval may be implied as well as express.[177] Therefore the grant to Texas to the extent of three leagues also was effected by reason of Congress' approval of that boundary prior to the passage of the Submerged Lands Act.

V

THE THREE-LEAGUE SEAWARD BOUNDARY OF THE REPUBLIC OF TEXAS WAS A REASONABLE AND PERMISSIBLE LIMIT IN THE GULF OF MEXICO AND WAS NOT CONTRARY TO ANY RULE OF INTERNATIONAL LAW.

Though the present controversy is wholly domestic and does not involve either foreign policy or international law, both support rather than deny the validity of the Texas three league boundary.

The developed state of international law in 1836-1845 during the life of the Republic of Texas has been presented in the Joint Brief filed by the Gulf Coast States.[181] It is there shown that under then-developed general international law three leagues was an accepted limit used by nations, and that no positive rule of international law had developed limiting a coastal nation's boundary to three geographic miles. The physical characteristics of the Gulf of Mexico which invited a broad territorial limit in that area were there described.[182]

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[177] Clause 3, Sec. 10, Art. 1, U. S. Const., requires that Congress "consent" to compacts between States. This consent or approval may be implied. *Virginia v. Tennessee*, 148 U. S. 503, at 521; *Virginia v. West Virginia*, 78 U. S. 39; *Green v. Biddle*, 21 U. S. 1.

[181] Joint Brief, 67-88.

[182] *Id.*, 88-91.

It remains in this separate Texas brief to point out the special relevance of international law principles to the case of the former Republic (now the State of Texas). At the request of Texas, Professor Louis B. Sohn of the Harvard Law School,[182a] C. John Colombos, Queen's Counsel, Middle Temple, London,[182b] and Professor Santiago Oñate of the University of Mexico [182c] have each prepared separate memoranda which are attached to this Brief as Exhibits I, II, and III, respectively.

[182a] Professor Sohn, Professor of Law at Harvard, was formerly legal officer in the Secretariat of the United Nations, where he edited the *Laws and Regulations on the Regime of the High Seas* (two volumes published in the United Nations Legislative Series, 1951-52); editor of *Cases on World Law* (1950) and *Cases on United Nations Law* (1956).

[182b] Mr. C. John Colombos, LL.D. (London), of the Middle Temple; Queen's Counsel; Sometime Professor of International Law at The Hague Academy of International Law; Associate of the Institute of International Law and member of its Committees on Maritime Law; member of the Executive Councils of The Grotius Society and of the Society of Comparative Legislation and International Law, Legal Adviser to the Admiral Commander-in-Chief of the Allied Fleets in the Mediterranean (1915-1919); Author of *The International Law of the Sea* (Fourth edition now in print) and of a *Treatise on the Law of Prize* (3rd edition, 1949).

[182c] Graduate, University of Mexico, with the degree abogado "magna cum laude"; Professor of Law and Professor of History in the University of Mexico; author of "la Novación en Derecho Privado Mexicano"; commissioned by the Supreme Court of Mexico to prepare a work entitled "Homenaje de la Suprema Corte de Justicia a la Constitucion de 1857"; publicatións in the *Revista de la Escuela Nacional de Jurisprudencia* and in *Boletin de la Información Judicial*, etc.

Texas, after its declaration of independence from Mexico, stood in the same position as the United States had 61 years earlier. Texas formally declared its independence and adopted a constitution and supporting laws. It maintained an effective civil government within its declared boundaries. It raised, maintained, and equipped an army and a navy. The army conquered an invader and kept the land of the Republic free from further invasion throughout its entire period of existence. The Texas Navy swept the Mexican Navy from the Gulf of Mexico and effectively patrolled and protected the seaward boundary area during the whole period from independence to annexation. The Republic sent and received diplomatic agents and representatives. It was formally recognized by, and concluded treaties with, the principal maritime nations of the world. Thus both *de facto* and *de jure* it was an independent state under international law.

The Government's Brief can not and does not deny these historic facts. It simply refuses to recognize the consequences which flow from them under the law of nations:

(1) As an independent coastal nation, Texas had both sovereignty and ownership over a territorial belt along its coast, including its seabed and subsoil.

(2) It had the right to define the seaward limit of that territorial belt. It did so shortly after independence by specific domestic statute fixing its Gulfward boundary at three leagues.

(3) Although its boundaries were made known to all the principal maritime nations of the world, no protest was ever made concerning them during the entire period of independence.

(4) Under international law, the United States, in particular, is in no position now to question the existence of this three-league boundary in view of the course of relations with the Republic of Texas, the annexation agreement, and the fact that it followed and adopted the three-league boundary for itself in the Treaty of Guadalupe Hidalgo and subsequent treaties and conventions.

These points are considered in the order stated.

A. AS AN INDEPENDENT COASTAL NATION, TEXAS HAD BOTH SOVEREIGNTY AND OWNERSHIP OVER A TERRITORIAL BELT ALONG ITS COAST, INCLUDING ITS SEABED AND SUBSOIL.

The authorities presented to this Court in *United States v. Texas*, 339 U. S. 707 establish beyond doubt that the Republic of Texas as an independent nation possessed both sovereignty and ownership of a territorial belt along its coast.[183]

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[183] See summary of Opinions of Jurists and Publicists, 1670-1950, Appendix pp. 18-50, Brief for the State of Texas in Opposition to the Motion for Judgment, *United States v. Texas*, No. 13, Original, October Term, 1949. A complete Summary of such opinions to 1950 appears in 3 Baylor Law Rev. 267-311. See also Daniel, *Sovvereignty and Ownership in the Marginal Sea*, Forty-fourth Conference, International Law Association, Copenhagen, 1950. These authorities were not before this Court when *United States v. California*, 332 U.S. 19, was decided. Many of them apparently were not before the Court of Crown Cases Reserved which decided *The Queen v. Keyn*, 2 Ex. 10.63 (1876) (later overruled by the Territorial Waters Jurisdiction Act of 1878, 41 & 42 Vict. c. 73.

This Court in *United States v. Texas* said:

> "The Congress of Texas on December 19, 1836, passed an Act defining the boundaries of the Republic. The southern boundary was described as follows: 'Beginning at the mouth of the Sabine River, running west along the Gulf of Mexico *three leagues* from land, to the mouth of the Rio Grande.' . . .
>
> "We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held. In other words, we assume that it then had the *dominium* and *imperium* in and over this belt which the United States now claims." 339 U.S. 707 at 713, 717.

The Court then held that the Republic's soverignty and ownership in the marginal sea area passed to the United States under equal footing. It did not, and could not properly, hold that no such rights could exist under international law.

Ten of the world's leading publicists in the field of international law, in a Joint Memorandum presented to this Court in 1950, said:

> "Without collaboration, each of us concluded:
> "1. The Republic of Texas, as an independent nation, had full sovereignty over and ownership of the lands and minerals underlying that

portion of the Gulf of Mexico within its original boundaries *three leagues* from shore."[184]

B. TEXAS HAD A RIGHT TO DEFINE THE SEAWARD LIMIT OF ITS TERRITORIAL JURISDICTION AT THE REASONABLE DISTANCE OF THREE LEAGUES IN THE GULF OF MEXICO.

The fixing of the limits of territorial jurisdiction was and is a unilaterial act of the sovereign independent state. This right results from the fact of independence.

Judge Alvarez, concurring in the *Anglo-Norwegian Fisheries* case, said

> "1. Having regard to the great variety of the geographical and economic conditions of States, it is not possible to lay down uniform rules, applicable to all, governing the extent of the territorial sea and the way in which it is to be reckoned.
>
> "2. Each State may therefore determine the extent of its territorial sea and the way in which it is to be reckoned, provided it does so in a reasonable manner, that it is capable of exercising supervision over the zone in question and of carrying out the duties imposed by international law, that it does not infringe rights acquired by other States, that it does no harm to general interests and does not constitute an

[184] Joint Memorandum in Support of Rehearing in *United States v. Texas*, Defendant's Petition for Rehearing, *United States v. Texas*, No. 13, Original, October Term, 1949, at 56. The memorandum is signed by Joseph Walter Bingham, C. John Colombos, Gilbert Gidel, Manley O. Hudson, Charles Cheney Hyde, Hans Kelsen, William E. Masterson, Roscoe Pound, Stefan A. Riesenfeld, and Felípe Sánchez Román.

abus de droit." Fisheries Case (*United Kingdom v. Norway*), Judgment of December 18, 1951, I.C.J. Reports, 1951, at p. 150.

Christopher Meyer wrote earlier to the same effect:

> "Our investigations show that no sovereign State has fixed its maritime territorial limit after having consulted other States. They have all done so by virtue of their own authority. The fact does not alter the sovereign character of their decisions. Any sovereign state will, as a matter of course, in its practical politics pay regard to eventual conflicts of interest which may arise as a consequence of the exercise of its sovereign right. But this applies to all matters affecting the community of states, not only to the problem of territorial waters; and each state decides for itself the influence such regard shall have upon its own acts." Meyer, *The Extent of Jurisdiction in Coastal Waters* 516 (Leiden, 1937).

The reasonableness of a three-league limit in the Gulf of Mexico has been discussed. (Joint Brief, pp. 84-91). With respect to the Texas coast, it should be noted that the depth of the waters overlying the area gradually increases from the low water mark to an average of only 42 feet at the three-league line.[185] Lieutenant Commander Porter reported to the Secretary of the United States Navy on June 28, 1817, that "it will not be in my power to approach nearer

[185] The average depth at ½ mile from shore is 13 feet; at 1 mile, 18 feet; at 2 miles, 26 feet; at 3 miles, 29 feet; at 6 miles, 36 feet; and at 9 miles, 42 feet. See U.S. Coast and Geodetic Maps, Texas Coast.

the shore than ten miles of the Sabine."[186] An article published in *The Nautical Magazine and Naval Chronicle for 1840* advised "vessels, however, of heavy draft should not approach the bar [at Galveston] nearer than six fathoms [36 feet]".[187]

Even today pilots find it necessary to begin their guiding of vessels at least 7 miles and often 9 miles in the Gulf of Mexico off Sabine Point. The Coast Guard requires use of inland water "Rules of the Road" within the six fathom (36 foot) depth curve which in many places runs from seven to nine marine miles off the coast of Texas.[188] A profile section of the Texas mainland and continental shelf attached facing this page gives a general conception of the shallow slope of the continental shelf along the Texas coast and of the proportion which the area of submerged lands in controversy bears to the total area of the continental shelf.

That the same situation existed in the days of the Republic is indicated by regulations of the Republic of Texas with respect to the use of pilots in coastal waters out to fifteen miles.[189]

Instead of adopting a narrow limit for neutrality purposes (one league) and a broader limit (four leagues) for customs control, as the United States had done shortly after its independence,[190] Texas,

[186] 7 *British and Foreign State Papers*, 984.
[187] At p. 393.
[188] See U.S. Coast and Geodetic Map No. 1279, Calcasieu Pass to Sabine Pass.
[189] 2 Laws, Republic of Texas, 733-775.
[190] Letter, Jefferson to Genet, November 3, 1793, 1 *American State Papers* (*Class I—Foreign Relations*) 183 (Lowrie & Clarke ed., 1832); Neutrality Act of June 5, 1794, (1 Stat. 381); Customs Act of August 4, 1790 (1 Stat. 145, 164), and March 2, 1799 (1 Stat. 627, 648).

TINENTAL SHELF

bearing in mind the shallowness of the waters and the gradual slope of the Continental Shelf on the Texas coast, adopted a single boundary of three leagues.

Three leagues as a territorial limit had substantial support in the writings of international law publicists of the time.[191] It was far less than had been earlier claimed by some nations, notably Great Britain.[192] It had support in the treaty practice of nations,[193] a practice which by 1836 had countenanced limits for various purposes up to 20 leagues and by 1851, up to 30 leagues.[194]

The diversity of opinion at that time as to the proper extent of territorial jurisdiction, as well as the existing support for the three-league choice of Texas, appears in a letter written by Count Nesselrode of Russia to the British Minister on March 9, 1837, just *over two months* after the Texas Boundary Act was passed:

> "In the first place, as for the distance of three miles established by English legislation, can

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[191] Exhibit IV, infra, p. 199.

[192] British claims to dominion over "the Narrow Seas" continued to be asserted as late as 1835, despite the position taken in 1824 in the Channel Oyster Fishery dispute. Compare 2 Tomlin *Law Dictionary of the British Law*, "Navy" (Granger 4th ed., 1835), with 2 Smith, *Great Britain and the Law of Nations* 144-64 (London, 1935).

[193] See treaties included in Exhibit IV, infra, ____.

[194] See e.g., Treaty of Paris of Nov. 30, 1831 between Great Britain and France, 18 *British and Foreign State Papers* 641, 642 (20-league limit of mutual rights of search around Madegascar, Cuba, and Porto Rico and along the coast of Brazil); Treaty of Bogatá of Apr. 2, 1851 between Great Britain and New Granada, 40 *Id.* 45, 47 (30-league limits in the same areas)

this be considered a universal principle, authorized by the Law of Nations? We are far from agreement with this opinion. In fact, if one refers to the authority of the legal writers, one becomes convinced that there has never existed any general rule for determining the jurisdiction that any Power whatever has the right to exercise over the seas off its coasts. Some extend this right to 60 miles out, to the visible horizon, to *three leagues;* while others claim that its limits is restricted to mere cannon-range.

"On the other hand, if one consults the transactions previously signed between various Powers, one still finds proof of the same diversity of opinion, of the same uncertainty of principle on this question: take for example the Treaty of Paris of 1763, which fixed free fishing rights in the Gulf of St. Lawwrence at 3 leagues from the British coasts and at 15 leagues from Cape Breton; or else take the agreements signed by England concerning the Slave Trade, which extended over a zone of 20 leagues repressive measures brought to bear on this traffic.

"Finally, if one invokes the authority of the legislation of specific nations, one becomes convinced that there is an equal lack of general agreement which might authorize an obligatory principle, it will be seen that each Government has reserved for itself, by its own authority and free from any outside pressure [*sans contrôle*], its power to legislate on this matter, according to the interest and as it sees fit.

"But if there is one principle on which legal writers and Governments have always agreed, it is that each State has the right and the duty

to be guided first and foremost by the demands of its own security." [194a]

C. ALTHOUGH ITS SEAWARD BOUNDARIES WERE KNOWN TO THE PRINCIPAL MARITIME NATIONS OF THE WORLD, NO PROTEST WAS MADE DURING THE ENTIRE PERIOD OF TEXAS INDEPENDENCE.

The Texan Boundary Act of December 19, 1836, was published in the official newspaper,[195] the *Texas Telegraph and Resgister* of Galveston.[196] Copies of this paper were, by standard procedure of the Texas State Department, sent to all the diplomatic representatives of the Republic.[197] This Act was codified in the official laws of the nation.[198] The passage and continued existence of the Texas statute constituted notice to other States. *Anglo-Iranian Oil Co.* Case (Jurisdiction) I. C. J. Reports, 1952, at 107; *Lübeck v. Mecklenberg-Schwerin*, Annual Digest of Public International Law Cases, 1925-26, Case No. 85 at p. 114. Secretary Seward's argument to the contrary in his note to Mr. Tassara, upon which the Solicitor relies, has never been accepted as law by any international tribunal.

That the Boundary Act was actually communicated to the principal maritime nations is illustrated

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[194a] Letter dated March 9, 1837, Nesselrode to Durham, British Foreign Office Records, Embassy and Consular Archives, Russia, F. O. 181, Correspondence 120, 1835-1838, Notes from Ministers.

[195] See House Journal, Republic of Texas, 1st Cong., 2nd Sess., 1836-37, pp. 31-32.

[196] Issue of Dec. 27, 1836.

[197] 1 Garrison, *Texan Diplomatic Correspondence*, 127-201, esp. 141-42, 143-44, 157, 160, 170, 176, 198.

[198] 1 Laws, Republic of Texas 133.

by the records of the British Foreign Office. These records contain drafts of a treaty to be executed between Great Britain and Texas which quotes the boundary description used in the Act of December 19, 1839.[199] It appears from the file that the Foreign Office requested the opinion of Mr. Dodson, the Queen's Advocate, on the proposed text.[200] He replied with suggestions,[201] but none of these were directed to Article II which set forth the boundary description.[201a] Although Great Britain in 1824 in a particular situation had advocated a three-mile maximum limit on territorial waters, it made no protest against the Texas three league boundary during the entire life of the Republic.[202] The only protest from that source came after the Treaty of Guadalupe Hidalgo,[203] after Texas had become a member of the Union. This tardy British protest can have no relevance here, for the Submerged Lands Act fixes an-

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[199] British Foreign Office, F. O. 75/1 Texas, p. 110.

[200] Note on margin of draft, *Id.* p. 115.

[201] Letter, Dodson to Palmerston, November 30, 1840, *Id.* at 125.

[201a] The boundary description was not carried forward in the final draft.

[202] Apparently the genesis of Great Britain's assertions that three miles was a maximum limit of territorial jurisdiction was in the Channel Oyster Fishery dispute with France in 1824. History shows that Great Britain was willing to concede a two-league limit to France in accordance with the latter's domestic laws until it was discovered that the bulk of the oyster beds lay between three and six nautical miles off the French coast. Only then did the British raise their three-mile contention. See the original documents reprinted in 2 H. A. Smith, *Great Britain and the Law of Nations* 144-164 (London, 1935).

[203] Letter from Crampton to James Buchanan, April 30, 1848, 7 Manning, *Diplomatic Correspondence of the United States, Inter-American Affairs, 1831-1860*, Doc. 2858 p. 294.

nexation as the date when the boundary is required to have "existed" for the purpose of the grant.[204] Moreover, it was not renewed five years later when the Gadsden Treaty was concluded and therefore must be treated as waived.

It is significant that although Texas concluded treaties with the United States,[205] France,[206] Great Britain,[207] the Netherlands,[208] and the Hanseatic Cities,[209] and had representatives accredited to Spain,[210] Belgium,[211] and Mexico,[212] no nation ever protested the seaward boundary during the entire time between enactment of the statute and the annexation. The diplomatic recognition granted to the Republic of Texas [213] by Great Britain, the United

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[204] Sec. 2(a) (2), 67 Stat. 29.

[205] 4 Miller, *Treaties and other International Acts of the United States of America*, 697 (Washington, 1934).

[206] Laws, 1841, Republic of Texas, 5th Cong., Appendix p. 1; 2 Gammel's Laws of Texas 655.

[207] Laws, 1843, Republic of Texas, 7th Cong., i; 2 Gammel's Laws of Texas 880; Laws, 1843, Republic of Texas, 7th Cong., x; 2 Gammel's Laws of Texas 889.

[208] Laws, 1843, Republic of Texas, 7th Cong., xxvi; 2 Gammel's Laws of Texas 905.

[209] III Garrison, Texan Diplomatic Correspondence, Annual Report of the American Historical Assn. for the year 1907, at 569.

[210] 1 Garrison, *id*, at 532.

[211] *Id.*, at 1265.

[212] *Id.*, at 408.

[213] The United States sent six chargès d'affaires, Garrison, *passim;* France, a chargè d'affaires and consuls, III *id* at 1222, 1270, 1280, 1282, 1362; The Netherlands, consuls III *id.* at 963, 1563; Great Britain, a consul-general and consuls, III *id.* at 820, 942, 949. The entire history of these negotiations between the Republic of Texas and several European powers is fully discussed in Chase, Mary K., *Negociations de la Republique du Texas en Europe, 1837-1845* (Paris, 1932).

States, and other principal maritime powers of the world is also highly significant because that recognition was in each instance retroactive to the date of the successful revolution against Mexico and the establishment of Texas independence. *Oetjen v. Central Leather Co.*, 246 U. S. 297; *Underhill v. Hernandez*, 168 U. S. 250; *Williams v. Brutty*, 96 U. S. 176. It established acquiescence by each country of all the laws and acts of the newly recognized government since its inception. As this Court said in the *Oetjen* case:

> "It is also the result of the interpretation by this Court of the principles of international law that when a government which originates in revolution or revolt is recognized by the political department of our government as the *de jure* government of the country in which it is established, such recognition is retroactive in effect and validates all the actions and conduct of the government so recognized from the commencement of its existence." 246 U. S. at 302-303.

The Solicitor General attempts to impugn the Texas three-league seaward boundary by devising a new test—one which has no precedent in the international law of maritime boundaries. He states:

> "If it exceeds the limits ordinarily allowed by international law, it gains international validity only to the extent that it is recognized by other nations, or is acquiesced in by them over a considerable period after being brought to their attention by actual enforcement or in some other effective way." Gov't Brief, 188-89.

No such rule has ever had any sanction in international law. Speaking of similar contentions, Professor MacGibbon has recently written:

> "It has occasionally been maintained that the effectiveness of consent is vitiated if the consent be tacit or passive. Such an assertion amounts to a denial of the validity of any doctrine of acquiescence in the strict sense; that is, a denial that an illegal act or one of doubtful legality can be cured by anything short of positively expressed approval on the part of interested and affected States.
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> * * *
>
> "In so far as these views deny the relevance and legal effect of acquiescence in the form of absence of protest they run counter to the general current of opinion both past and present, . . ." 31 *British Yearbook of International Law* 143, 144-45.

On the contrary, as this Court has frequently recognized.

> "It is a principle of public law universally recognized, that long acquiescence in the possession of territory and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority." *Indiana* v. *Kentucky*, 136 U.S. 479, 510.[214]

The International Court of Justice applied the same principle in the *Anglo-Norwegian Fisheries* case, saying:

> "The Court notes that in respect of a situation which could only be strengthened with

[214] *Louisiana v. Mississippi* 202 U. S. 1; *Arkansas v. Tennessee*, 310 U. S. 563.

> the passage of time, the United Kingdom Government refrained from formulating reservations . . .
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> "The Court is thus led to conclude that the method of straight lines . . . had been consolidated by a constant and sufficiently long practice, in the face of which the attitude of governments bears witness to the fact that they did not consider it to be contrary to international law." I.C.J. Reports, 1951, p. 116, 139.

Inherent in the doctrine of acquiescence is the element of time. The Solicitor General admits that:

> "Prescriptive periods under international law are necessarily inexact and depend on the particular circumstances." [215]

but he thinks the entire life of the Republic of Texas too short a time to be binding on the United States and other nations. Texas enacted its statute and did not alter it during its entire history as a Republic. There was no period of vacillation. It is the *whole* history. As Professor Sohn points out:

> "The length of the period needed to establish a valid claim was sufficient here, as the claim involved constituted a permissible interpretation of existing general rules in this field. It was longer than that which elapsed between the final ratification of the Constitution of the United States and the claim by Jefferson that Delaware was a historic bay, and it was longer

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[215] Government's Brief, p. 195.

> than required by various States, including the United States, when claiming jurisdiction over the continental shelf." [216]

The same three league boundary was continued by the State of Texas after annexation. That boundary was adopted and carried forward by the United States, as the succeeding national sovereign, in the Treaty of Guadalupe Hidalgo. To the Solicitor General's prescriptive period should be added the 110 years of United States adherence to the Treaty of Guadalupe Hidalgo.

D. UNDER BASIC INTERNATIONAL LAW PRINCIPLES OF JUSTICE, EQUITY, AND REASON, THE UNITED STATES IS IN NO POSITION NOW TO QUESTION THE EXISTENCE OF THE REPUBLIC'S THREE LEAGUE BOUNDARY IN VIEW OF THE ENTIRE COURSE OF CONDUCT OF THE UNITED STATES.

Henry Wheaton, the first American publicist in international law, defined that law:

> ". . . as consisting of those rules of conduct which reason deduces, as consonant to justice, from the nature of the society existing among independent nations." *Elements of International Law* 35, (Phila. 1836).

Chief Justice Marshall said "the law of nations is a law founded on the great and immutable principles of equity and natural justice." *The Venus*, 8 Cranch, 253, 297.[217]

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[216] Exhibit I, p. 160.

[217] See also *Thirty Hogsheads of Sugar v. Boyle*, 9 Cranch 191, 198.

If the Court considers that questions of international law are involved, this Court should view them as would an international tribunal sitting when the events referred to in the Submerged Lands Acts occurred.

The entire course of conduct of the United States with respect to the Republic of Texas prior to and at the time of annexation, when subjected to the tests of justice, equity and reason on which the law of nations was then most surely based, compels the conclusion that the United States cannot and ought not to be heard to question the validity of Texas' three-league boundary.

As Professor Riesenfeld says in his memorandum attached to the Joint Brief:

> "Moreover, in the case of Texas the establishment of her boundary by the statute of 1836 is internationally valid and effective vis-a-vis the United States by reason of the conduct of the United States subsequent to the passage of said act. International law, like civil law in general, will neither condone, nor give effect to, inconsistent actions by a state nor permit the disregard of acquired rights. The first principle is known as the prohibition against '*venire contra factum proprium*' (a doctrine similar to the common law doctrine of estoppel): the other principle is familiar as the protection of 'droits acquis'. Both rules are well established; as precedent for the first one the *Eastern Greenland* case,[218] the *Minquiers and Ecréhos*

[218] *Case of the Legal Status of Eastern Greenland*, P. C. I. J. Ser. A/B No. 53, pp. 64-73.

> Case,[219] and Article 38c of the Statute of the International Court of Justice may be cited, while the second one inspired the reservation in favor of the legitimate interest of other states in the United States declaration of September 28, 1945, regarding the policy with respect to coastal fisheries in certain areas of the high seas".[220] Exhibit II to Joint Brief, p. 219

This Court will not, as we believe an international court would not, permit an alteration of history already written for more than 116 years, especially when the Congress and the President have determined that the historic boundary shall stand.

The United States has more at stake than square miles of seabed. At stake is the sanctity of boundaries and agreements made with the Republic of Texas and carried forward into the Treaty of Guadalupe Hidalgo, which for over 100 years have been relied upon by both the United States and Mexico and ratified and reconfirmed again and again.

E. A COASTAL NATION IS NOT REQUIRED TO HAVE A SINGLE MARITIME BOUNDARY.

The Government's case hinges upon its assertion that there is a single seaward "national boundary" fixed at three miles and no State can have a boundary for any purpose beyond that. This over-simplifies the very nature of an ocean boundary. The Govern-

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[219] Minquiers and Écréhos Case, I. C. J. Reports, 1953, 47.

[220] Presidential Proclamation, No. 2668, September 28, 1945, 10 Fed. Reg. 12,304, 59 Stat. 885.

ment treats a sea boundary like an international land boundary.

1. *A Nation's Ocean Boundary Necessarily Differs From Its Land Boundary.*

A land boundary between sovereign nations might be compared to a high wall at which the rights and jurisdiction of both nations abruptly terminate. Not so a sea boundary, which is altogether different. Going outward from the beaches there is no definite distance limitation upon the effectiveness of jurisdictional extensions for all purposes, short of encountering similar extensions from an opposite coast.

The concept of "the high sea" and of "freedom of the seas" is not a negation of law and government.[220a] National sovereignty follows a national vessel for many purposes (jurisdiction over crimes, for example) throughout its journey upon the high seas. Its journey across the seas from one nation to another is not comparable to crossing a land boundary. When a vehicle and its occupants cross a land boundary they pass immediately from one full sovereignty to another. This is not so when a vessel moves toward or away from a nation's coast. There is no concept for a land boundary similar to the right of innocent passage through a nation's territorial waters.

As stated by William E. Masterson in his work, *Jurisdiction in Marginal Seas*, p. xiv-xv:

[220a] See *"Convention on the High Seas"* and Section III *"Convention on Fishing and Conservation of the Living Resources of the High Seas,"* adopted at United Nations Conference on the Law of the Sea, Geneva, Switzerland, April 27, 1958.

"The attempt within recent years, on the part of some writers, judges, and governments, to fix a single zone beyond which the application or enforcement of them all is forbidden, thus treating them as a single problem, has cast this extremely difficult subject into hopeless confusion, and has littered the juristic literature on the subject with careless assertion. Such attempts are often veiled efforts to dodge the accurate solution of a perplexing problem.

"It would seem that one way out of the confusion into which the question of the so-called 'three-mile limit' or 'territorial waters' has been abandoned, is to trace historically and to study analytically the laws and practice of the maritime nations with reference to each interest, as a distinct and separate subject of inquiry."

2. *A Coastal Nation May Have a Number of Separate Seaward Extensions of Jurisdiction, Each for a Different Distance.*

Those who advocate a "block" concept of a maritime boundary (as does the Government in its brief) have completely failed to grasp the basis for the modern law of sea boundaries and the trend in the development of those boundaries. While it was considering the Submerged Lands bill Congress received advice on this point from the State Department in a letter from Assistant Secretary Thurston B. Morton to Senator Jackson:

"This Nation has traditionally taken the position that it was not prevented by international law from reasonably exercising its jurisdiction beyond the 3-mile limit for certain purposes. Legislation is now in effect whereby

this Government exercises jurisdiction over foreign as well as domestic vessels for purposes of customs control (Anti-smuggling Act of August 5, 1935, 49 Stat. 517, 19 U. S. C. 1701-1711). This exercise of jurisdiction is recognized in international practice. Exercises of jurisdiction in the high seas for fiscal, sanitation, or navigation purposes are not infrequent." (Senate Interior Committee Hearings on S. J. Res. 13 , Cong., 1st Sess. 1088)

Historically, in the earliest period of European world expansion, the monarchs asserted an exclusive control of the ocean under the label of *mare clausum*, but under the impact of developing world trade this soon gave way to the concept of the freedom of the seas. The collapse of *mare clausum* left a vacuum into which the coastal nations gradually extended on an ad hoc basis various limited jurisdictions. The late 19th Century search for absolutes [220b] led to attempts to build these into a unit and terminate them at one line. This advocacy of "block" sea boundary made necessary the use of the word "territorial." But the effort to make the land concept of an all-purpose boundary fit the waters of the ocean failed for functional reasons, and made necessary the use of the

[220b] As Dean Pound points out:

"We should not forget that the last four decades of the nineteenth century in the United States and the last half of the century on the Continent called for organization and system and stability, after an era of legal growth, rather than for creation and change. For a season philosophy had done its work. Today there is a revival of interest in the seventeenth and eighteenth centuries as we realize that we have the same problem of liberalizing and reshaping and supplementing a traditional body of authoritative legal materials which confronted them." Pound, *The Formative Era of American Law* 26 (New York, 1950).

word "extraterritorial." This Victorian insistence on a dogmatic approach to the sea-coast problems of sovereignty culminated in the advocacy of a three-mile territorial sea measured from and following the sinuosities of the coast. A necessary corollary to this approach was the ten-mile limitation imposed on the width of bays. These ideas reached their crest at the beginning of the 20th Century, but have been steadily receding since. Thus, the ten-mile bay corollary was held not binding in the *Anglo-Norwegian Fisheries* case,[220c] and a straight base line is permitted under some circumstances by Article IV of the recent Geneva Convention.[220d]

A zone approach to multiple maritime boundaries for varying purposes was implicit in the compromise offered by the United States at the recent Geneva Conference on the Law of the Sea.[220e] The United States offered to agree to six miles for territorial waters plus an additional six mile exclusive fishing zone (a total of 12 miles for fisheries). This same

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[220c] Fisheries case (*United Kingdom v. Norway*) judgment of December 18, 1951, I. C. J. Reports, 1951.

[220d] Article 4, Section II, Part I, of Section I *"Convention on the Territorial Seas and the Contiguous Zone,"* adopted at United Nations Conference on the Law of the Sea, Geneva, Switzerland, April 27, 1958.

[220e] This proposal received a majority vote of the nations represented but not the two-thirds majority required for adoption. Eighty-six nations were represented at the Conference. At least 27 of these now claim a breadth of territorial sea beyond three miles and 31 assert jurisdiction beyond 9 marine miles for some purposes. The majority of those voting against the United States' proposals (including almost all the other nations of the Western Hemisphere) were those countries which favored a broader limit than three miles. See Synoptical Table, 1st Committee, Territorial Waters and Contiguous Zone, A/CONF.13/O.1/L.-11/Rev. 1, 3 April 1958; Special Addendum to Fifth Resume on Law of the Sea Conference, April 25, 1958.

concept is found in the agreement actually made at Geneva for a "Contiguous Zone," [220f] not to exceed twelve miles in which the coastal nation might exercise jurisdiction for customs, fiscal, immigration, or sanitary purposes.

Professor Sohn of the Harvard Law School analizes the practice as follows:

> "The practice of States, judicial decisions and writers on international law seldom deal with the question in terms of a definite boundary for all purposes. Instead there are constant references to the fact that the dominion and jurisdiction of a State over the coastal sea are different from those over the land, in particular because of the right of foreign vessels to innocent passage through the territorial sea. (See, e.g., 1 Ortolan *Regles internationales de diplomatie de la mer* 168-72 (3rd ed., 1856). During such a passage foreign vessels are subject to the jurisdiction of the adjoining State for various purposes; the closer they get to land, the more are they subject to the jurisdiction of the coastal State; finally, when a vessel enters inland waters, local jurisdiction over it becomes almost complete. . . .
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> "It is not suprising, therefore, that the Congress of the United States almost simultaneously adopted two different zones for maritime captures [one marine league] and customs control [four leagues] . . . Previously, during the negotiations with Great Britain over fisheries in the North Atlantic, the United States proposed

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[220f] Article 24, Part II, *"Convention on the Territorial Sea and the Contiguous Zone"* of *"Final Report of the United Nations Conference on the Law of the Sea."*

> a limit of three leagues as the most proper distance for exclusive fishing rights. (See, e.g., Reports of a Committee of Congress of January 8, 1782, 23 *Journals of the Continental Congress*, 1774-1789, 472, at 477-78.) Chancellor Kent thought it proper to apply the four-league rule to other areas and insisted that 'no beligerent right should be exercised within "the chambers formed by headlands, or any where at sea within the distance of four leagues, or from a right line from one headland to another." ' (1 Kent, *Commentaries on American Law* 30 (1826).) There is no reason to assume that any one of these lines was considered as the absolute boundary of the United States for all purposes, or that the jurisdiction exercised within the line nearest to the shore should be considered as territorial and the jurisdiction beyond that line as extraterritorial.". . . Exhibit I to Joint Brief, 163-64.

A mature and forward looking consideration of the problems of maritime boundaries will lead to the rejection of the Government's dogmatic assertion of Victorian absolutes.

3. Under the Dual Sovereignty of Our Federal System National and State Seaward Extensions of Jurisdiction Need Not All Have the Same Terminal Limit.

The United States does not have one comprehensive boundary act as did the Republic of Texas and

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[220g] See Sohn Memorandum, Exhibit I, p. 154. The Republic of Texas was not a federal union. It was divided into counties rather than being composed of sovereign States.

as do many other nations.[220g] The land boundaries of the United States have been fixed by treaty. There are at least two reasons for the absence of a comprehensive Federal Act fixing seaward boundaries. First, as our Federal Government is composed of a union of sovereign States, it is natural for Congress to think in terms of State boundaries. A second reason is the very nature of the problem of defining and fixing a single sea boundary with the consequent resort to the words *territorial* and *extraterritorial*—words, as Professor Sohn points out, which have limited meaning for us today.

After the Solicitor General prepared his Brief in this case, a State Department Counselor has recognized this viewpoint. Mr. Raymond T. Yingling, Assistant Legal Advisor, Department of State, in an article entitled "Geneva Conference on Law of the Sea," published in American Bar Association's *Section of International and Comparative Law Bulletin*, July 1958, has said apropos the distinction between "territorial" and "extraterritorial" rights that any distinction between the words "sovereignty" and "exclusive jurisdiction and control" are unimportant:

> "Article 2 of the convention [Geneva Convention on the Continental Shelf] provides that the coastal state exercises over the continental shelf 'sovereign rights' for the purpose of exploring and exploiting its natural resources. These rights are exclusive. The term 'sovereign rights' was contained in the International Law

> Commission draft and was a compromise between the views of those states which desired to use the term 'sovereignty' and those which preferred 'jurisdiction and control.' As Article 2 makes clear that the rights of the coastal state are exclusive and as Article 3 of the convention provides that the rights of the coastal state over the continental shelf do not affect the legal status of the superadjacent waters as high seas or that of the airspace above those waters, the distinctions between sovereignty, sovereign rights and exclusive jurisdiction and control are perhaps not of great practical importance." *Bulletin*, 10 at 19 (July, 1958)

This is a recognition by one important counsellor in the State Department that the block concept of a seaward boundary is yielding to the functional approach, and indeed, where the Outer Shelf Act applies State civil and criminal laws (67 Stat. 462, Sec. 4(2)), it is difficult to see any practical difference.

So Congress very wisely omitted the words "national boundary" from both the Submerged Lands Act and the Outer Shelf Act.

The legislative history of these acts has been developed elsewhere in this brief, but here we point out that Congress rejected a "block" three mile national seaward boundary. In doing so it wisely left itself free to act on a functional basis and consider each seaward extension separately.

VI.

REGARDLESS OF THE VALIDITY OF THE TEXAS THREE-LEAGUE BOUNDARY IN 1836 AS THE LIMIT OF TERRITORIAL WATERS, IT WAS VALID AS A BOUNDARY OF TEXAS' JURISDICTION AND CONTROL OVER A PORTION OF THE CONTINENTAL SHELF. AS SUCH IT WAS A BOUNDARY WHICH EXISTED AT THE TIME TEXAS BECAME A MEMBER OF THE UNION.

If it is considered as an outer limit of territorial waters, the Texas three-league boundary provided by its statute in 1836 was valid under international law. However, even if the Government's contention be correct that under international law at that time a three-league limit of territorial waters was considered as extending too far, still Texas could validly establish its jurisdiction and control over a portion of the adjacent continental shelf and the natural resources therein out to three leagues from the coast.

The United States has asserted and now maintains its exclusive jurisdiction and control over the resources in the subsoil and the seabed to the edge of the continental shelf. The outer edge of the continental shelf is therefore a "limit" or a "boundary" for the purpose of the development of the continental shelf. It is a boundary which all concede that the United States had the right to establish for these purposes. Contrary to the Government's contention at page 107 of its brief, the Outer Shelf Act does not

assert that its rights in the outer continental shelf are "extraterritorial." [220]

If the United States in 1953 could, under international law, validly establish a boundary for these particular purposes out to the edge of the continental shelf, there is no principle of international law which denies that Texas in 1836 had a right to establish a boundary for the same purpose out to the lesser distance of three leagues.

Actually, the main force of the Government's argument against a three-league boundary comes from what Secretary Dulles says in his letter to the Attorney General about the effect on the *present* position of this nation in its international relations if its stand regarding a three-mile limit on territorial waters is weakened. This argument, however, is

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[220] "Sec. 4 LAWS APPLICABLE TO OUTER CONTINENTAL SHELF.—(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located *within a State* . . .

(2) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this Act are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands the area of the State if its *boundaries* were extended seaward to the outer margin of the outer Continental Shelf and fixed structures erected thereon, which would be within . . ." Public Law 212, 83rd Congress, Chapter 345—1st Session, H. R. 5134.

based on the false assumption that the limit of territorial waters is involved in this case. When we turn to the *real* issue in this case, that is, the right to develop the resources of the subsoil and seabed of the continental shelf, we see that the Texas three-league boundary is in nowise inconsistent even with the *present* foreign policy of the United States.

Far from setting a limit or boundary for these purposes at three miles, the United States has fixed its boundary for the development of the submerged lands at the outer edge of the continental shelf. So, to be consistent and logical, it must be conceded that if the United States for these purposes can validly extend its jurisdiction and control to the edge of the continental shelf, then there is nothing inconsistent with the present international position of this nation in recognizing the validity of a Texas boundary for the same purposes out to three leagues.

It is true that the Texas boundary was provided by its laws in 1836, while the United States did not expressly assert its right to develop the submerged lands to the edge of the Continental Shelf until recently. However, there is no reason to conclude that what was valid in this century for the United States was invalid in the last century for the Republic of Texas.

The Texas Boundary Act was an unlimited assertion of all rights out to three leagues. It went beyond a mere claim of territorial waters; it was an assertion of jurisdiction and control for all purposes that might validly be claimed by a sovereign nation in

the submerged lands as well as the overlying waters. Even if (as we do not concede) it went beyond permissible limits in fixing the extent of territorial waters, still it was valid for the purpose of asserting rights in the subsoil and seabed. As such it was an existing boundary in 1836 and when Texas became a member of the Union. It therefore fulfills the requirements of the Submerged Lands Act for the transfer of rights to Texas out to three leagues in the Gulf of Mexico.

VII

THE UNITED STATES HAS A THREE-LEAGUE BOUNDARY IN THE GULF OF MEXICO FIXED BY TREATY IN 1848, REGARDLESS OF THE EXTENT OF TERRITORIAL WATERS. THIS NATIONAL BOUNDARY IS CONSISTENT WITH AND SUPPORTS THE VALIDITY OF THE THREE-LEAGUE TEXAS BOUNDARY.

There is at least one undisputed and irrefutable fact in this case. That is that the United States has a national boundary in the Gulf of Mexico three leagues from the coast opposite the mouth of the Rio Grande, and that this boundary (adopted by the United States and Mexico in the Treaty of Guadalupe Hidalgo) followed the earlier Republic of Texas' three-league boundary.

The Treaty of Guadalupe Hildago is a binding existing treaty, never repudiated, abandoned or overruled by the United States. As such, it is binding upon both parties to this dispute. The treaty uses

the word "boundary." Article 5 of this treaty is:

> "The *Boundary* line between the two Republics shall commence in the Gulf of Mexico, *three leagues* from land, opposite the mouth of the Rio Grande . . ." [221]

The word "boundary" was carried forward in subsequent treaties and conventions which ratified and confirmed time and again this three-league boundary in the Gulf of Mexico.[222] The line was actually surveyed, sounded, and delineated by the Department of the Interior in 1853 and again by the Department of State in 1911. It is marked on the official map of the Department of State in the following words: "International boundary begins three leagues from land and opposite the mouth of the Rio Grande.[223]

It cannot be argued successfully that the three-league boundary of the Republic of Texas from 1836 to 1845 was invalid when the national boundary of the United States fixed by the Treaty of Guadalupe Hidalgo in 1848 is itself three leagues. At least, the Republic of Texas boundary was as valid prior to and at the time it entered the Union in 1845 for the same purposes as was the national three-league boundary of the United States in 1848 and continuously to the present time.

We need not debate here whether all extensions of national jurisdiction off the Texas coast extend

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[221] 9 Stat. 922-23.

[222] See Point III B supra, p. 86.

[223] See reproduction of map in the brief opposite page

out to three leagues or for just what purpose the Treaty of Guadalupe Hidalgo fixes a national boundary. Neither do we need to determine the width of territorial sea off the Texas coast. The only extension of national jurisdiction involved in this case—i. e., property rights under the waters—goes out much further than three leagues.

The Submerged Lands Act, by referring to boundaries three leagues in the Gulf of Mexico, recognizes the existence of the boundary fixed by this treaty.[225]

If the transfer to Texas must depend on the existence of a national boundary three leagues from the coast in the Gulf of Mexico, such a boundary was established by the Treaty of Guadalupe Hidalgo and it is still in full force and effect.

The Department of Justice, in attempting to destroy the validity and effect of the three-league boundary of both the Republic of Texas and the United States in the Gulf of Mexico, seeks to apply a shorter limit of exclusive "territorial waters" (three miles) as controlling.

Assuming for the moment that the Dulles letter and the policy of his predecessors have the effect of relinquishing exclusive "territorial waters" juris-

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[225] The discussion of the national boundary fixed by this treaty and the original Texas boundary from which it originated, constituted the major portion of the argument in the House and Senate against the four attempts which were made (on the same grounds asserted here by the Solicitor General) to limit the grant to three miles for all States. Both the House and Senate refused to do what the Solicitor General is now asking this Court to do. 99 Cong. Rec. 2569, 3956-57, 4203, 4478. See supra, 41-46.

diction within a portion of the three-league boundary, does it follow that this releases all other jurisdiction and rights within the area, including the seabed and subsoil? The answer is obvious.

Regardless of what the Secretary of State may decide as to the rights of foreign nations in the waters beyond three miles, he cannot change the three-league boundary fixed by the higher authority of a treaty. Neither can he change by such administrative action the boundary of Texas which existed in its statutory law at the time it entered the Union.[226]

In fact, Mr. Dulles and his predecessors have not attempted to do what the Solicitor General attributes to them in the Government brief. On the contrary, they have continuously recognized the validity of the national three-league boundary between the United States and Mexico opposite the mouth of the Rio Grande. They simply say that the rights in the waters within such boundaries are not exclusive of other nations beyond three miles.[226a]

In so distinguishing between the validity of the national boundary at three leagues for certain purposes and a territorial waters limit of three miles for

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[226] This Court has held that the right of a State, upon its admission into the Union, to rely upon its established boundary lines "cannot be impaired by any subsequent action on the part of the United States." *New Mexico v. Colorado*, 267 U. S. 30, 41. See also *New Mexico v. Texas*, 276 U. S. 557, and *Louisiana v. Mississippi*, 202 U. S. 1, 40-41.

[226a] The latest statement by a State Department official is Yingling, Raymond T. "Geneva Conference on the Law of the Sea," 2 *A.B.A. International and Comparative Law Bulletin*, No. 3, p. 10 (July, 1958).

other purposes, the Secretary of State is merely recognizing that a nation does not necessarily have one single national maritime "boundary" or "jurisdiction" for all purposes.

One great fallacy in the Solicitor General's case is that he has failed to consider this distinction between the lesser limit of "territorial waters" and the extent of the "national boundary" at three leagues in the Gulf of Mexico for other purposes.

The State Department has made the distinction, but the Solicitor General has failed to follow it. Instead, he has treated the terms as synonymous. From the Dulles letter it appears that the Attorney General "pointed out" that this case involves the location of the maritime boundary of the United States, but before he finishes the sentence, Mr. Dulles proceeds to say, "and you request the statement of the position of the United States concerning the extent of its *territorial waters*"—not *boundary*, but the extent *of territorial waters.*

The Attorney General may have desired a statement of foreign policy on "maritime national boundary", but he ended up asking for and receiving a statement from Mr. Dulles limited wholly to "the breadth of territorial waters." A careful reading of the Dulles letter (Government's Brief, p. 342) and all of the other foreign policy statements contained in the brief will reveal that the three mile policy statements applied only with respect to the extent of "territorial waters." Never has it been applied to deny the existence of the Nation's three-league boundary in the Gulf or its validity for purposes

which did not involve the free use of the waters by foreign nationals.

Mr. Tate, the official representative of the State Department, recognized the distinction, and stated the position of the United States with respect to the three-league boundary fixed by the Treaty of Guadalupe Hidalgo, as follows:

> "*The United States recognizes the treaty as setting the boundary as between Texas and Mexico.* I do not think the State Department has had occasion to pass on the question as to the territorial waters claimed by Texas vis-a-vis other nations because of Guadalupe Hidalgo. We have as far as Mexico is concerned. The treaty only purports to set a boundary as between the United States and Mexico. We recognize that that boundary has been set by the treaty, but I think we have not had to pass on the question of what are the *territorial waters* because of the treaty." Senate Interior Committee Hearings, on S. J. Res. 13, 83rd Cong., 1st Sess., 1081.

Even the Solicitor General appears to have temporarily caught the distinction with respect to Texas when he states (Point III B 2, page 234) as follows:

> "The invariable foreign policy of the United States has been to claim no more than three miles of *marginal sea.*"

Note that he does not say that this Nation has an invariable policy of claiming no more than a three-

mile *boundary* in the Gulf of Mexico. In view of the undisputed fact that our Nation has a three-league *boundary* in the Gulf of Mexico opposite the mouth of the Rio Grande, he could not truthfully include in his point the term "boundary", which is the term used in the Submerged Lands Act. He resorted to the term "marginal sea", and developed his point exclusively on the basis of the extent of "territorial waters", even though neither of these terms was used in the Act as the extent of the grant. Neither were the terms used in the committee hearings, reports, and floor debates as having anything to do with the the extent of the grant. The only attempted exceptions were the unsuccessful efforts in the House and Senate to amend the bill so as to limit to the three-mile theory of territorial waters, and these attempts were soundly defeated.[227]

It is obvious that the Congress could have chosen a three-mile territorial water limit as the line by which to measure the grant of the underlying seabed and subsoil. By the same token, the Congress could choose the historic boundary which existed at the time such State became a member of the Union which the hearings, reports and debates show that the Congress recognized as three leagues in the case of Texas. Congress decided to choose the latter. Its decision is controlling in this case.

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[227] See supra, 41-46.

VIII

THIS COURT HAS UPHELD THE ACT AS AGAINST THE SAME CONTENTIONS NOW ASSERTED BY THE SOLICITOR GENERAL AGAINST TEXAS. UNDER STARE DECISIS THE GOVERNMENT'S CASE IS FORECLOSED.

As the Court well knows, stare decisis is particularly applicable to prior adjudications concerning property rights.[227a] Stare decisis governs the decision of the same questions in a subsequent action, even though the parties are not the same.[228]

The same contentions against Texas were urged before this Court in the case of Alabama (and Rhode Island) against Texas and certain Federal officials, in which the validity and constitutionality of the Act were challenged. (347 U.S. 272).

The present Solicitor General successfully defended the Federal public officials in that case. The grant and the Act were upheld. The question there was held to be a domestic one, involving Congressional conveyance to the States of the subsoil and seabed of the area in controversy. The same

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[227a] *United States v. Title Ins. Co.* 265 U.S. 472, following *Minnesota Co. v. National Co.*, 3 Wall 332, where this Court said:

> "Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open" 3 Wall. p. 334. *Accord*: *Vail v. Arizona*, 207 U. S. 201; 14 *Am. Jur.* 286.

[228] *Utilities Production Corp. v. Carter Oil Co.*, 72 F. 2d 655, 662 (10th Cir.); *Clark, et al v. E. C. Shroeder Co., Inc.*, 73 F. Supp. 1007, 1008, aff. 10th Cir. 167 F. 2d 739, cert. den. 335 U. S. 815; *Bigelow v. Old Dominion Copper Mining and Smelting Co.*, 225 U. S. 111.

assertions there made, concerning foreign policy and international law, were interjected. They were held irrelevant and overruled by this Court.

The Court having upheld the Act and grant to Texas in a prior case involving the same contentions, this case against Texas is foreclosed under stare decisis.

Conclusion

The Government's Motion for Judgment should be denied and judgment here rendered for Texas. In the alternative, the Texas case should be severed and tried before this Court with a full development of evidence, and with the right of examination and cross examination.

Respectfully submitted,

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August 13, 1958

I, Will Wilson, Attorney General of Texas, a member in good standing of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of August, 1958, I served copies of the foregoing brief either in person or by mailing, postage prepaid, copies thereof to the office of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C., and to the Attorneys General of the States of Alabama, Florida, Louisiana, and Mississippi, respectively.

Will Wilson

EXHIBIT I

Memorandum on the International Law Questions Concerning the State of Texas Which Are Involved In United States v. States of Louisiana, et al.

By Louis B. Sohn*

1. The Republic of Texas had a three-league boundary at the time Texas became a member of the Union. But, the United States contends that the Texas Boundary Act of December 19, 1836, was not valid, in particular because it exceeded the limits ordinarily allowed by international law and could gain international validity only to the extent that other nations recognized it or acquiesced in it. [Brief for the United States, pp. 188-89.]

2. The claims of Texas differ from the claims of the other Gulf States in two respects: (a) Texas was an independent nation from 1835 to 1845; (b) during that period Texas enacted a statute defining the boundaries of Texas as running "along the Gulf of Mexico three leagues from land." [1 Laws of the Republic of Texas 133 (1838).]

3. The basic questions of international law involved in the Texas case are:

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* Professor of Law, Harvard University; former legal officer in the Secretariat of the United Nations; editor of *Laws and Regulations on the Regime of the High Seas*, 2 vols. (published in the United Nations Legislative Series, 1951-52); editor of *Cases on World Law* (1950) and *Cases on United Nations Law* (1956).

(a) Was the Texas three-league maritime boundary invalid under the general international law which prevailed when the claim was made in 1836?

(b) To what extent has this boundary been confirmed or invalidated by later developments?

4. When Texas became independent in 1836, it had all the rights and duties of an independent State. As such it had both the right and the duty to define its boundaries, including its maritime boundary. [See, e. g., 3 Vattel, *The Law of Nations or the Principles of Natural Justice* 141 (translation by Fenwick of ed. of 1758, Washington 1916; Hefter, *Das Europäische Völkerrecht der Gegenwart* 139 (3rd ed., 1855); P. de Laparadelle, *La Frontière: Étude de Droit International* 65-72]. Many constitutions or other organic laws contain express provisions defining national boundaries; this is especially the practice of the nations of the Western Hemisphere. [See, e. g., Article I of the Political Constitution of Chile of August 9, 1826, translated in 16 *British and Foreign State Papers* 1045, at 1048 (1832); Article I of the Political Constitution of El Salvador of February 18, 1841, translated in 29 *idem* 206, at 207 (1857); Article II of the Political Constitution of Honduras of February 8, 1848, translated in 36 *idem* 1086 (1861); Article II of the Constitution of the United Mexican States of October 4, 1824, translated in 13 *idem* 701 (1848).] On the other hand, it may be noted that the United States is one of the few nations of this hemisphere which did not define expressly its boundaries by a general statute. Texas, however, immediately enacted a statute defining its

boundaries, both on land and at sea, thus fulfilling its duty to make known to the other nations the extent of its political jurisdiction.

5. A nation's delimitation of its boundaries is invalid only if it is inconsistent with the international obligations of the nation in question. Ordinarily, it is presumed that a nation is best qualified to determine what its boundaries are and that, in consequence, its own delimitation should be considered as provisionally valid until the contrary is proved. As stated by the International Court of Justice: on the one hand, "the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it"; on the other hand, "the validity of the delimitation with regard to other States depends upon international law." [*I. C. J. Reports*, 1951, 116, at 132. See also *ibid.*, at 160.] Other nations which consider that a particular delimitation of boundaries has violated their rights can take such steps as are permitted by international law to have their rights recognized. If no objections are raised, it is considered that there has been general acquiescence to the particular delimitation from the very beginning. It may be noted that in recent years, a similar problem has arisen with respect to national proclamations of jurisdiction and control over the continental shelf, and that it has been solved in accordance with the principles enunciated in this paragraph. [See, e. g., Lauterpacht, Sovereignty over Submarine Areas," 27 *British Year Book of International Law* 376, at 393-98 (1950).]

6. While some objections have been raised to the land boundaries of Texas as defined in the 1836 Act,

there does not seem to be on record any objection to the three-league boundary of that nation in the Gulf of Mexico. As the activities of the new Republic and of its Congress were under close scrutiny by the neighboring nations and by other nations having trade interests in the Gulf of Mexico, and as the current boundary difficulties focused general attention on the boundary claims of the Republic, it cannot be doubted that all interested nations had sufficient knowledge of the 1836 Texas Act. Though it would be idle to speculate why no protests were made, the diplomatic correspondence of the period shows such a general interest in establishing good relations with the new nation, that even those nations which might have had some doubts about the validity of the statute, preferred to acquiesce in this boundary rather than endanger their commercial interests in Texas. Or the nations concerned might have felt that in view of the shallowness of the Texas coast and lack of special fishing interests in that area at that time, no rights of navigation or fishing were actually involved. But whatever was the reason, the basic fact remains that no protests were made, and that ordinarily such a lack of protest can be interpreted as an expression of the general conviction that the situation in question was in conformity with the requirements of international law. [See, generally, MacGibbon, "Some Observations on the Part of Protest in International Law," 30 *British Year Book of International Law* 293, at 306-7 (1953).]

7. Acquiescence to the sea boundaries of Texas can be implied also from the fact that none of the acts

recognizing Texas as an independent nation were accompanied by any reservations with respect to those boundaries. If there were any doubt about their validity, this would have been the appropriate moment to raise the issue and to exact a concession as part of the price of recognition. [See, e.g., the letter from the British Colonial Secretary of July 12, 1840, in E. D. Adams, ed., *British Diplomatic Correspondence Concerning the Republic of Texas, 1834-1846*, at 24 (1918).] The only treaty that deals with the rights of Texas in the Gulf of Mexico went in fact far beyond the boundaries specified in the Texas statute. The treaty betwen Great Britain and Texas for the suppression of the African slave trade, signed on June 28, 1842, prohibited the search of Texas vessels by British cruisers "in the Gulf of Mexico, to the northward of the 25th parallel of north latitude" and "to the westward of the 90th degree of longitude, west of Greenwich," i.e., in an area extending in many places more than 200 miles from the Texas border. [29 British and Foreign State Papers 85, at 86.]

8. The range of the doctrine of acquiescence in international law is considerable; it may even validate a claim which was originally illegal. [See, e.g., MacGibbon, "The Scope of Acquiesence in International Law," 31 *British Year Book of International Law* 142, at 142-51, 182. See also my Memorandum attached to the Joint Brief of the Gulf States, No. 15] It has special force, however, in a situation in which there exists a well-known dispute about the scope and range of a principle of international law. In such

a case there is really no question of acquiring rights through prescription, but rather of proceeding on the basis of one interpretation of the rule instead of another. Once it is established that a particular rule of international law permits a large degree of flexibility within vague and broad limits, any assertion of a right within these limits is automatically valid. If another nation should wish to show that the particular exercise of sovereign discretion is invalid despite its general conformity with the rule, it must establish affirmatively that there has been an abuse of this right of discretion and that the limits of reasonableness have been exceeded. [Cheng, *General Principles of Law as Applied by International Tribunals* 121-36 (1953).]

The only rule which can be considered as accepted by everybody with respect to territorial waters or seaward boundaries is that a nation is entitled to exercise a reasonable amount of jurisdiction and control over a limited area of the sea adjoining its coast. All other rules are simply unilateral interpretations of this general rule and cannot prevail over equally reasonable interpretations of the main rule by other nations. [See Memorandum attached to the Joint Brief of the Gulf States, Nos. 5-12.] In addition, regional deviations from the main rule are usually permitted to the extent that such deviations are reasonably necessary because of special conditions in the region or because of the establishment of historical rights prior to the crystallization of more restrictive rules. [*Ibid.*, Nos. 13-15.] It may be noted that one hundred years later the Presidential Pro-

clamation on the continental shelf was based on the same principles, i.e. ,that "the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just," and that the boundary shall be determined by the states concerned in accordance with "equitable principles." [10 *Federal Register* 12303 (1945).]

9. In the case of Texas, the three-league limit was established as soon as possible after the creation of the independent nation and persisted without change throughout the period of its existence. The length of the period needed to establish a valid claim was sufficient here, as the claim involved constituted a permissible interpretation of existing general rules in this field. It was longer than that which elapsed between the final ratification of the Constitution of the United States and the claim by Jefferson that Delaware was a historic bay, and it was longer than required by various nations, including the United States, when claiming jurisdiction over the continental shelf. [See Lauterpacht, "Sovereignty over Submarine Areas," 27 *British Year Book of International Law* 376, at 393 (1950); United Nations Secretariat, *Memorandum on the Regime of the High Seas* (U.N. Doc. A/CN.4/32), at 89-91 (1950).]

When Texas became a part of the United States, its rights to an area in the Gulf of Mexico were transferred to the United States. [*United States v. Texas*, 339 U. S. 707 (1950).] It is a basic rule about succession of states, that a transfer of a territory carries with it a transfer of the territorial waters adjoining

that territory. For instance, the Permanent Court of Arbitration in the *Grisbadarna Case* approved the view that according to "the fundamental principles of the law of nations, both ancient and modern... the maritime territory is an essential appurtenance of land territory, whence it follows that at the time when, in 1658, the land territory called the Bohuslan was ceded to Sweden, the radius of maritime territory constituting an inseparable appurtenance of this land territory must have automatically formed a part of this cession." [Award of October 23, 1909, published in 1 Scott, ed., *The Hague Court Reports*, 121, at 127. See also 3 Gidel, *Le droit international public de la mer* 178 (1934); Huber, *Die Staatensuccession* 55 (1898); Keith, *The Theory of State Succession* 27 (1907); Schönborn, *Staatensukzessionen* 31 *(Handbuch des Völkerrechts,* Vol. II, Part 5, 1913).] Though a successor state may relinquish rights obtained through annexation, there is no evidence that these rights to a three-league wide area in the Gulf of Mexico were relinquished by the United States. As this area was "properly included within, and rightfully belonging to the Republic of Texas," it became a part of the territory of the State of Texas and of the United States, in accordance with the Joint Resolutions of March 1, 1845 and December 29, 1845. [5 Stat. 797 and 9 Stat. 108.] It is well known that this phrase in the Resolutions was due to the disputes about the western and northern frontiers of the State of Texas, but there seems to be no evidence of any dispute over the Gulf boundary of the State. It may also be noted that the 1836 Statute

has been properly reprinted in the successive editions of the laws of Texas and no protests against it were made by the United States on any of these occasions. [See, e.g., Hartley, *Digest of the Laws of Texas*, Art. 1631, at 504 (1850); Oldham & White, *Digest of the Laws of Texas*, Art. III, at 55 (1859); Paschal, *Laws of Texas*, Art. 438, at 192 (eds. of 1866, 1870, 1875); 1 Sayles, *Revised Civil Statutes of Texas*, at 296 (1888); 1 Gammel, *Laws of Texas*, at 1193 (1898).]

10. That the Government of the United States has accepted the three-league boundary in the Gulf is confirmed by the Treaty of Peace, Friendship, Limits and Settlement of February 2, 1848 (so-called Treaty of Guadalupe Hidalgo). That Treaty provided in Article 5 that the boundary line between the United States and Mexico "shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande". [5 Miller, *Treaties and Other International Acts of the United States of America*, p. 213.] That this description of the beginning of the United States boundary (three leagues from land) was not accidental is confirmed by the fact that this phrase was already included in Article 4 of the first American draft of the proposed treaty of April 15, 1847. [*Ibid.*, p. 265.] The Mexican instructions of December 30, 1847, provided similarly that the dividing line between the two Republics shall begin "in the Gulf of Mexico at a distance of three leagues from the land at a point opposite the mouth of the Rio Bravo del Norte". [*Ibid.*, p. 299.] In view of the unanimity on this point, this provision did not give

rise to any difficulties in the negotiations, and all the other drafts contain the phrase that the boundary shall commence in the Gulf of Mexico "three leagues from land". [*Ibid.*, pp. 270, 288, 315, 316, 317, 325. Only the Mexican draft of January 3, 1848, provided simply that the boundary should extend "to the sea", but this draft was immediately abandoned. *Ibid.*, p. 316.]

In his annotations to the Treaty of 1848, Mr. Hunter Miller, the historian of the State Department, points out that the phrase "three leagues from land" in the Treaty was based on the Texas Act of 1836. [5 Miller, *op. cit.*, p. 315, n. 1.] As it is well-known that his annotations were the result of most painstaking research into the origin of the Treaty, his note linking the Treaty and the Act clearly acknowledges that the purpose of this provision of the Treaty was to recognize the fact that the boundary of Texas extended three leagues from the coast.

11. It has been contended that the establishment of the boundary between the United States and Mexico as commencing in the Gulf of Mexico three leagues from land did not mean at all that the sea boundary of Texas also extended three leagues into the sea. There seems to be no justification for such a contention. It is not conceivable that the parties to the Treaty contemplated that the sea boundaries of the two countries should extend three miles but that the boundary line *between* them should extend three leagues, thus leaving only an imaginary line in the sea dividing not the territories of the two nations but two regions of the high seas. Only if this were the

boundary between the territorial waters of the two states, was there authority in international law to draw this line. International law does not allow nations to divide areas of the high seas between them, and such intention cannot be presumed in the 1848 Treaty.

12. The position taken in the brief presented by the Solicitor General that the sea boundary in the Gulf of Mexico was three leagues out was confirmed by the correspondence between the United States and the British Government in 1848. In its note of April 30, 1848, the British Government considered that Article 5 of the Treaty with Mexico involved an assumption of jurisdiction "on the part of the United States and Mexico, over the Sea, beyond the usual limit of one Marine League (or three geographical miles), which is acknowledged by International Law and Practise as the Extent of Territorial Jurisdiction, over the Sea that washes the Coasts of States". The British Government declared, therefore, that they "cannot acquiesce in the extent of Maritime Jurisdiction assumed by the United (States) and Mexico in the Article in question". [7 Manning, *Diplomatic Correspondence of the United States, Inter-American Affairs, 1831-1860*, Doc. 2858, p. 294.] In his reply of August 19, Mr. James Buchanan, Secretary of State of the United States, stated "that the stipulation in the treaty can only affect the rights of Mexico and the United States. If for their mutual convenience it has been deemed proper to enter into such an arrangement, third parties can have no just cause of complaint. The Government of

the United States never intended by this stipulation to question the rights which Great Britain or any other Power may possess under the law of nations." [7 Manning, *op. cit.*, Doc. 2687, p. 32.] While it is not clear what is meant by this statement, it at least confirms the fact that the Treaty did affect at least the rights of Mexico and the United States and that in the relations between them the sea boundary did extend three leagues from land. As far as Great Britain was concerned, the statement seemed to mean that by this arrangement the United States and Mexico did not intend to interfere with such rights as Great Britain possessed under the law of nations, whatever those rights at that time might have been. Consequently, the right of Mexico and the United States to extend their jurisdiction in some or all respects "three leagues from land" would depend on the status of international law at that time, and a reply to this question would turn upon the interpretation of the rules of international law considered in No. 8, above.

13. In evaluating the importance of the British protest of April 30, 1848, one ought to keep in mind also the following additional considerations:

(a) In the first place, despite this protest the United States and Mexico went ahead with the Treaty and on May 30, 1848, exchanged the documents of ratification without any reference to the British protest or the alleged invalidity of Article 5. The reason for lodging a protest against a treaty provision before its ratification is to induce the States concerned to abandon or modify the objection-

able provision or to refrain from ratifying the treaty until the objectionable provisions have been removed from the treaty. [See MacGibbon, "Some Observations on the Part of Protest in International Law," 30 *British Year Book of International Law* 293, at 300.] Neither of these actions followed the British protest in this case, and no better results were achieved by the British protest to Mexico of June 9, 1848 (i.e., after the exchange of ratifications). As the Mexican Foreign Minister replied on November 17, 1848, the rights of other nations with respect to the extent of territorial sea remained in the same state as before the treaty. [The Brief of the United States, Appendix F, at 404.]

(b) When the matter of the Gulf boundary arose again in 1853, in connection with the so-called Gadsden Treaty, the United States and Mexico, ignoring the previous British protests, embodied in that Treaty a provision identical with that in the 1848 Treaty. [6 Miller, *op. cit.*, 293, at 294.] Despite that fact, no further protests were made by Great Britain against the Gulf boundary of the two nations. Even if a privileged position was temporarily reserved to Great Britain in consequence of the 1848 protests, it is generally accepted that scant regard will be paid to the isolated protest of a nation which takes no further action to combat continued infringement of its rights. [See MacGibbon, *op. cit.*, at 310-12.] No further action with respect to the Gulf boundary of the United States was taken by Great Britain after that time and the effect of the original protest has thus lost its force. [*Cf.*, the attitude taken

by the International Court of Justice with respect to the French protest to Norway of December 21, 1869, in *I. C. J. Reports*, 1951, 116, at 135-37.]

(c) A protest by one nation only does not invalidate a Treaty between two other States with respect to all other nations. At best it creates a privileged position for the protesting state. As far as other nations are concerned, their lack of protest over 110 years can easily be construed as complete acquiescence in the extension of the jurisdiction of the two nations concerned into the Gulf of Mexico to three leagues from the shore. [See MacGibbon, "The Scope of Acquiescence in International Law," 31 *British Year Book of International Law* 143, at 152-67 (1954).]

14. The explanations of the 1848 Treaty, given by Secretary of the Navy Welles and Secretary of State Seward in 1864 (*Papers Relating to Foreign Affairs*, 1864, Part 2, at 547-48), do not conform to facts. The provisions of the 1848 Treaty cannot be ascribed to "inadvertence, analogous to a clerical error," especially as they were reinserted in the 1853 Treaty despite the protest made by Great Britain in 1848. Neither did they constitute a special application of the customs line of four leagues. There is no indication anywhere that customs regulations were enforced in the Gulf only up to the three-league line provided in the Treaty rather than to the four-league line prescribed by statutes. In those disputes which have arisen, the United States has proceeded on the basis of the general four-league rule. [See, e.g., *The Muriel E. Winters*, 6 F. (2d) 466 (1925); *Arch v.*

U. S., 13 F. (2d) 382 (1926).] In any case, the negotiations with Mexico provide no basis for the allegation that the Treaty was to apply to customs matters only.

15. It may be noted that in his letter to Great Britain of January 22, 1875, about the Spanish claims to a six-mile limit (1 *Papers Relating to the Foreign Relations of the United States*, 1875, 649-50), Secretary of State Fish in part retreated from the position taken in 1862, though he still mentioned the argument that the three-league provision in the Treaty with Mexico was "probably" suggested by the Hovering Acts. However, his main argument was based on the 1848 letter, i.e., that the Treaty "was never intended to trench upon the rights of Great Britain, or any other power under the law of nations," whatever such rights might be in this particular situation. Though the Secretary of State in the same letter stated that the United States has "always understood and asserted that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond a marine league from its coast," this assertion is not consistent with the actual practice prevailing in the crucial period 1836-1848 with respect to the extent of jurisdiction in the Gulf of Mexico. The note of Secretary of State Buchanan of August 19, 1848, carefully avoided any approval of the British assertion that a jurisdiction of a nation can extend only one marine league into the sea. [7 Manning, *Diplomatic Correspondence of the United States, Inter-American Affairs, 1831-1860*, at 31-32, 294.] When it is necessary to choose be-

tween a clear treaty provision and later interpretations of it, the clear text ought to prevail. The burden of proof in such a case is on the party arguing that there are some valid reasons for interpreting the provison otherwise than in accordance with the natural sense of the words. [See, e. g., the case of the *Interpretation of the Convention of 1919 Concerning the Employment of Women during the Night*, where such a departure from the clear meaning was not proved to the satisfaction of the Court despite a considerable amount of contrary practice (Permanent Court of International Justice, Advisory Opinion of November 15, 1932, *P.C.I.J. Publications*, Series A/B, No. 50, at 373, 376-82); International Court of Justice, Advisory Opinion of May 28, 1948, on Conditions of Admission of a State to Membership in the United Nations, *I.C.J. Reports*, 1948, 57, at 63; International Court of Justice, Advisory Opinion of March 3, 1950, on the Competence of the Assembly regarding Admission to the United Nations, *I.C.J. Reports*, 1950, 4, at 8.] It may also be noted that the various statements made by the United States related to jurisdiction of other nations over adjoining waters, and that the United States did not hesitate to assert "extraterritorial" jurisdiction as soon as its own interests were involved. For instance, in a series of so-called "liquor treaties" the United States forced other nations to grant to the United States the power to seize foreign vessels within an hour's sailing distance from the coast. [See, e.g., the Convention with the United Kingdom of January 23, 1924, *U. S. Treaty Series*, No. 685.] The Anti-Smuggling Act of

1935 established customs-enforcement areas extending at least 50 miles beyond either the ordinary 12-mile customs waters or the one-hour sailing distance provided for in the liquor treaties. [49 Stat. 517. See also Jessup, "The Anti-Smuggling Act of 1935", 31 *American Journal of International Law* 101-6 (1937).] On the initiative of the United States, the American Republics established a neutrality zone of 300 miles around the countries of the Western Hemisphere. [*U.S. Foreign Relation*, 1939, vol. 5, at 35-37.] In 1950, the United States established air defense identification zones extending in some areas for a distance of over 300 miles from land. [50 *Federal Register* 9319-21 (1950); 20 *idem* 8184-87 (1955). See also Murchison, *The Contiguous Air Space Zone in International Law* 18-77 (1956).] Though all these extensions of jurisdiction seem reasonable in the light of the modern developments in transportation and armaments, they certainly are a far cry from the above-quoted statement by Secretary of State Fish (and similar statements of later Secretaries of State) that "no nation can rightfully claim jurisdiction at sea beyond a marine league from its coast." The cumulation of special zones, though disguised by labelling such an exercise of jurisdiction as extraterritorial, makes the notion of a three-mile zone of territorial waters but an empty shell. If the claim of Texas to a three-league zone of control and jurisdiction over the subsoil and sea bed of the continental shelf is compared with the other claims, its reasonableness can no longer be contradicted.

16. *Conclusions.* On the basis of the foregoing analysis, the following conclusions may be reached:

(a) The delimitation of the boundaries of Texas by the Act of 1836 did not constitute a violation of any rules of international law prevailing at that time.

(b) The United States, as a successor to the rights of Texas, inherited in 1845 jurisdiction and control over a three-league belt of territorial waters and its subsoil.

(c) The United States not only did not repudiate this right to jurisdiction and control, but confirmed it by the treaties of 1848 and 1853 with Mexico.

(d) The protests made by Great Britain in 1848 did not invalidate Article 5 of the 1848 Treaty, because they were not followed up despite an ambiguous United States reply and the repetition of the provision in the 1853 Treaty.

(e) No other protests were made and such general acquiescence would have confirmed the legality of the three-league rule in the Gulf of Mexico, even if the British protest were effective.

(f) Later interpretations by the United States of the 1848 situation did not conform to facts, and cannot prevail over the implied acceptance of the three-league rule in 1836 and its clear approval in 1848.

(g) Consequently, the act of the Republic of Texas in establishing a three-league boundary in the Gulf of Mexico was not contrary to any rules of international law prevailing during the period 1836-1845.

EXHIBIT II

Memorandum on International Law Issues Involved in United States of America v. State of Texas

C. John Colombos, Q. C., LL. D.

1. I propose dealing in the present Memorandum with the main points of international law arising in this case, and principally from the standpoint of the State of Texas.

2. It appears essential, in my opinion, to examine in the first instance, the legal status of Texas at the time she joined the Union in 1845.

3. By a final Act passed on the 2nd March, 1836, Texas declared her independence of Mexico and adopted a constitution as a sovereign Power under the title of "Republic of Texas". Her independence was so recognised, at a very early date, by the United States, Great Britain, France and the Netherlands, and similarly by several other States shortly afterwards.

4. In his message to General Almonte, Mexican Minister at Washington, the Secretary of State of the United States, Mr. Upshow, made the official declaration that the "United States regard Texas as in all respects an independent Nation, fully competent to manage its own affairs and possessing all the rights of other independent Nations" (quoted in D. Gardner's "*A Treatise on International Law*" (1844) pp. 98-101.) The right of the Republic of Texas to conclude Treaties with foreign Powers was never dis-

puted. See, for instance the "*Treaty of Friendship, Navigation and Trade*" concluded with France on the 24th June, 1840 (30 B. F. S. P., p. 1228).

5. The seaward boundaries of the new Republic were fixed as follows by a Statute of its Legislature passed on the 19th December, 1836; "Beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande, thence up the principal stream of the said river to its source, then due north to the 42° of north latitude, thence along the boundary line as defined in the Treaty between the U. S. and Spain, to the beginning" (Gammel's *Laws of Texas*, vol. 1, p. 1193).

6. The validity of this boundary does not appear to have been contested by any State during the life of the Republic and so far as can be ascertained, I am not aware of any protest being raised against the limit of "three leagues from land" fixed by the Republic of Texas for its belt of territorial waters.

Breadth of the Territorial Sea

7. As regards the right of the Republic of Texas to fix its maritime belt at three-marine leagues, soon after the declaration of its independence in 1836, it is necessary to point out that there has never existed a unanimity of view in international law on the exact limit of a State's territorial waters. There is unanimity of views as to its minimum of three miles, but no unanimity as to its maximum. This becomes obvious from the examination of judicial de-

cisions, diplomatic correspondence and opinions of experts in international law.

8. In the judicial field, the divergence of views is well illustrated by the conflicting judgments given in 1876 by the British Exchequer Division (Crown Cases Reserved) in the *Franconia Case (Queen v. Keyn)* (reported in Law Reports, Exchequer Division, vol. II, pp. 63 to 239) where seven judges were divided as against six. The decision of Sir Robert Phillimore—himself an author of an authoritative treatise on international law—in this case is particularly instructive as it contains an exhaustive review of the leading British and American precedents and authorities on the subject of territorial waters. There is a similar comprehensive review of this "diversity of opinion" in the judgment of Cockburn, C. J. (at p. 193).

9. A similar conflict of opinion is to be found in the writings of the most authoritative authors on international law.

This divergence of views dates at least as far back as the latter part of the 16th century, and it has continued up to the present time. Thus the celebrated French jurist, Jean Bodin, states in the first edition of his famous book, published in 1576, that:

> "But forasmuch as the sea it selfe cannot be proper unto any priuat man, the right thereof belonging unto such soueraigne princes as dwell thereby, who may lay impositions thereupon thirtie leagues off from their owne coast, if there bee no other soueraigne prince neerer

to let them, as it was adjudged for the Duke of Savoy".

Io Bodini Andegavensis de Republica Libri Sex. Paris, 1586. English translation by Knolles, London, 1606.

10. An identical view is traceable in the books of two of the leading modern authorities on international law: Thus in his *International Law*, Oppenheim states that:

> "No unanimity exists as to the breadth of the maritime belt or the point on the coast from which it is measured . . . Since at the end of the 18th century, the range of artillery was about three miles or one marine league, that distance became generally recognized as the breadth of the maritime belt. But no sooner was a common doctrine advocated than the range of projectiles increased with the manufacture of heavier guns. Moreover, technical developments in sea transport and communications, in the range of guns and other changes have not been altogether without effect upon the three-mile rules" (8th Ed. by Lauterpacht, Vol. 1 1955) pp. 488 and 490). This opinion was upheld by Prof. Hyde in his last edition of his monumental work on *International Law, chiefly as interpreted and applied by the U. S.* (2nd Ed. 1945) Vol. 1, sec. 142-143.

11. The same pronounced degree of divergence is reflected in the discussions which took place at the meetings of the International Law Commission of the United Nations from 1950 to 1956, and at its

recent Conference at Geneva on "The Law of the Sea", from February to April 1958, which, like the Hague Conference of 1930, failed to reach an agreement on the extent of the territorial sea.

12. In his comments on the 1930 Conference the late Prof. J. L. Brierly, Chichele Professor of International Law and Diplomacy in the University of Oxford, states:

> "On territorial waters no convention could even be drafted because no agreement could be reached on the fundamental question of the width of these waters. The reason was simply that nations have different interests in this matter and they were not willing to make the concessions which a convention would have called for. There was therefore no agreed policy for the Conference to translate into law."

The Codification of International Law: (47 Michigan Law Review (1948-49), pp. 5-6).

13. In other words, the same uncertainty which over a century ago was emphasized in the official communication of Count Nesselrode, Vice-Chancellor of the Tsar of Russia, to Lord Durham, British Amabassador at St. Petersburgh, persists today. In that communication, Count Nesselrode wrote that if reference is made to the authority of publicists, one acquires the conviction that there never existed a geenral rule for determining the jurisdiction that any State is entitled to exercise on the sea surrounding its coasts. On the other hand, if one consults the former agreements concluded between

various Powers, one finds again the evidence of the same divergence of views, and the same uncertainty of principles on this question. (Case of the British vessel "*The Lord Charles Spencer*" in Foreign Office Records, F. O. 181—Correspondence Russia, 120 (1835-38)).

14. The Report adopted by the International Law Commission at its eighth session at Geneva in July, 1956, affords a further illustration of this divergence of view on the breadth of the territorial sea. Article 3 of the Report, reads as follows:

> "1 The Commission recognizes that international practice is not uniform as regards the delimitation of the territorial sea.
>
> 2. The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles.
>
> 3. The Commission, without taking any decision as to the breadth of the territorial sea up to that limit, notes, on the one hand, that many States have fixed a breadth greater than three miles and, on the other hand, that many States do not recognize such a breadth when that of their own territorial sea is less.
>
> 4. The Commission considers that the breadth of the territorial sea should be fixed by an international conference."

15. The commentary to this article reads as follows:

> "(5) At its eighth session, the Commission resumed its study of this problem (of the

breadth of the territorial sea) in the light of the comments by Governments. Those comments showed a wide diversity of opinion, and the same diversity was noted within the Commission. Several proposals were made; they are referred to below in the order in which they were put to the vote. Some members were of the opinion that it was for each coastal State, in the exercise of its sovereign powers, to fix the breadth of its territorial sea. They considered that in all cases where the delimitation of the territorial sea was justified by the real needs of the coastal State, the breadth of the territorial sea was in conformity with international law: this would cover the case of those States which had fixed the breadth at between three and twelve miles. Another opinion was that the Commission should recognize that international practice was not uniform as regards limitation of the territorial sea to three miles, but would not authorize an extension of the territorial sea beyond twelve miles. On the other hand every State would have the right to extend its jurisdiction up to twelve miles. A third opinion was that the Commission should recognize that every coastal state was entitled to a territorial sea of a breadth of at least three, but not exceeding twelve, miles. If, within those limits, the breadth was not determined by long usage, it should not exceed what was necessary for satisfying the justifiable interests of the State, taking into account also the interests of the other States in maintaining the freedom of the high seas and the breadth generally applied in the region. In case of dispute, the question should, at the request of either of the parties, be referred to the International Court of Justice.

A fourth opinion was reflected in a proposal to state that the breadth of the territorial sea could be determined by the coastal State in accordance with its economic and strategic needs within the limits of three and twelve miles, subject to recognition by States maintaining a narrower belt. According to a fifth opinion and proposal, the breadth of the territorial sea would be three miles, but a greater breadth should be recognized if based on customary law. Furthermore, any State might fix the breadth of its territorial sea at a higher figure than three miles, but such an extension could not be claimed against States which had not recognized it or had not adopted an equal or greater breadth. In no case could the breadth of the territorial sea exceed twelve miles.

"(6) None of these proposals managed to secure a majority in the Commission, which, while recognizing that it differs in form from the other articles, finally accepted, by a majority vote, the text included in this draft as article 3.

"(7) The Commission noted that the right to fix the limits of the territorial sea at three miles was not disputed. It states that international law does not permit that limit to be extended beyond twelve miles. As regards the right to fix the limit between three and twelve miles, the Commission was obliged to note that international practice was far from uniform. Since several States have established a breadth of between three and twelve miles, while others are not prepared to recognize such extensions, the Commission was unable to make a decision on the subject, and expressed the opinion that the question should be decided by an international conference of plenipotentiaries.

"(8) It follows from the foregoing that the Commission came out clearly against claims to extend the territorial sea to a breadth which, in its view, jeopardizes the principle that has governed maritime law since Grotius, namely, the freedom of the high seas. On the other hand, the Commission did not succeed in fixing the limit between three and twelve miles."

Report of the International Law Commission (1956) General Assembly Official Records, 11th Session, Suppl. No. 9 A/3159.

16. It cannot, of course, be disputed that both the United States and Great Britain have advocated the "traditional conception" of a three-mile limit of territorial waters. The general application of the doctrine suffers, however, two main exceptions:

(1) *As result of an International Convention.* The principle that the breadth of the territorial sea is susceptible of being regulated by an international agreement binding on the contracting parties, is strikingly illustrated by the proposals made at the Geneva Sea Conference of 1958 by the United Kingdom for an extension of the territorial sea to six miles and by the United States for a similar extension but with an additional six-mile zone for the regulation of fishing and the exploitation of the living resources of the sea. (Speech of the Hon. Arthur H. Dean, Chairman of the U. S. Delegation, on April 16, 1958—A/Conf. 13/L.) The American and British proposals provide a clear evidence that both countries were prepared to renounce their traditional policy of a three-mile territorial sea if an international agree-

ment could be reached. It is true that both proposals failed to obtain the required two-thirds majority at the Conference's plenary session on the 28th April, 1958, but they provide, in the words of the Hon. Arthur Dean, "an honest effort to find a common ground in a spirit of compromise".

It is beyond the purpose of this Memorandum to enumerate the various international agreements extending the contracting parties' territorial sea beyond their ordinary limits. It is sufficient to refer to the Anglo-French Convention of the 29th September, 1923, under which the two countries agreed to provide for the regulation of their fisheries in the open sea adjacent to their territorial waters. *(Smith, Great Britain and the Law of Nations. A Selection of Documents*, Vol. 2, pp. 144-164). I am not aware that any protest has even been raised against this agreement (or the previous or subsequent agreements on the same subject) by any foreign State.

17. (2) *By Custom.* In specific circumstances, international law recognises the validity of claims by the coastal State for an extension of the ordinary limits of its territorial waters, based on custom or on prescriptive or historical rights. It is sufficient to refer on this point to the pleadings and judgment of the International Court of Justice, in the recent *Fisheries Case* (I. C. J., Reports, 1951, p. 116), for a comprehensive review of the authorities on the subject. It is now generally admitted that the assertion of such customary or historic rights by a coastal State, are entitled to recognition by other States, and that they do not violate any principle of inter-

national law, although they might infringe, in some minor respects, the freedom of the seas.

It is important in this connection to point out that the main reason for the reluctance of the United Nations and Great Britain—the two great champions of the three-mile limit of territorial waters—to accept a wider breadth of the maritime belt, is based on a strict conception of the freedom of the seas (to which the present writer is also an adherent), and the infringment of this doctrine which an extension of this limit may occasion.

It does not follow, however, that this doctrine is so rigid as not to admit of any reasonable exceptions. This is clearly evidenced by the observations submitted by the United Kingdom Government to the International Law Commission in 1953:

> "It has hitherto been the policy of Her Majesty's Government to oppose any claims to the exercise of jurisdiction outside territorial waters. Many countries have, however, claimed to exercise jurisdiction for certain limited purposes beyond territorial limits. For the most part these purposes have related to the enforcement of customs, fiscal or sanitary regulations only and the jurisdiction has been exercised within modest limits, generally within a "contiguous zone" not more than twelve miles from the coast. Her Majesty's Government have not themselves found it necessary to claim a contiguous zone, and wish to place on record their emphatic opposition as a matter of principle to any increase, beyond limits already recognised, in the exercise of jurisdiction by coastal States over the waters off their coasts, whether such

> increase takes the form of the extension of territorial waters or the exercise of wider forms of jurisdiction outside territorial waters. Her Majesty's Government are satisfied, however, that on the basis of established practice, the article proposed by the Commission is acceptable provided that: (i) jurisdiction within the contiguous zone is restricted to customs, fiscal or sanitary regulations only; (ii) such jurisdiction is not exercised more than twelve miles from the coast; (iii) this article is read in conjunction with another article stating that the terriorial waters of a State shall not exceed more than three miles from the coast unless in any particular case a State has an existing historic title to a wider belt. (A/CN, 4/76, p. 70 and Official Records of the 8th session of the General Assembly of the United Nations, Suppl. No. 9 (A/2456).".

Somewhat similar considerations must have influenced the statement of the U. S. Secretary of State, Mr. James Buchanan, when in answer to the British protest against the three leagues belt of territorial waters adopted in Article 5 of the *Treaty of Guadalupe Hidalgo of 1848*, he replied that "if, for the mutual convenience of the two countries, it has been deemed proper to enter into such an arrangement, third parties can have no just cause of complaint. The Government of the United States never intended by this stipulation to question the rights which Great Britain, or any other Power, may possess under the law of nations" (Moore, *Digest of International Law* (1906) vol. I, p. 730). The United States thus threw on Great Britain the bur-

den of proving that Article 5 of the Treaty infringed the rules of the law of nations as then understood.

18. No other protest is on record as having been raised against the three leagues limit agreed upon by the United States and Mexico in the 1848 treaty. Nor does there appear that any foreign Power did ever protest against the 1836 Statute of the Republic of Texas, fixing its limits at "three leagues from land to the mouth of the Rio Grande". This boundary must equally have been known to the United States at the time of its recognition of the Republic of Texas in March 1837. Such recognition implies, according to the judgment of the International Court of Justice in the *Anglo-Iranian Oil Co. Case (Jurisdiction)* in I. C. J., Reports, 1952, at p. 107, a knowledge of the Texas Statute. A similar implication can be drawn from the diplomatic correspondence exchanged between the two Governments from 1836 to 1845 which does not contain any recorded objection by the United States to the Texan boundary. Indeed, Mr. Daniel Webster, writing to the U. S. Minister at Mexico in 1842, stated, in part, as follows: "Her [Texas's] *limits* are defined and peace, with an opportunity of improving her resources are much more important to her than any chances of territorial acquisition" (text in Manning's *Diplomatic Correspondence of the United States. Inter-American Affairs*, vol. 8 (1851-1860) pp. 108-109). Moreover, the *Treaty of Guadalupe Hidalgo* of 1848 fixing the boundary line in the Gulf of Mexico at three leagues from land, leads to the inescapable conclusion that the United States not only did not

consider this boundary to be contrary to any principle of international law, but, on the contrary, expressly acknowledged it as binding. The annotations of Mr. Hunter Miller to the treaty link the term "three marine leagues from land" to the 1836 Statute of Texas and establish beyond doubt that one of the purposes of the treaty was to recognise the Texas three-league limit of territorial waters. (*Treaties and Other International Acts of the United States of America*, vol. 5, p. 315 note 1).

19. In its treaty with the Republic of Texas of November 1840, the British Government recognised the independence and sovereignty of Texas, without raising any objection as to its maritime boundary (Foreign Office) (F. O. 75/1. Records in the Public Records Office, London)—That such boundary was known to the British Government appears clearly from the Report given by Mr. Dodson, the then Queen's Advocate, to the Secretary of State for Foreign Affairs, in connection with the "engagements undertaken by Texas" and which reads as follows:

> "A State which voluntarily and without the pressure of necessity, thinks proper to annex itself to a Foreign Power, can only do so subject to the engagements which it may previously have contracted with other Powers" (Report, dated May 15, 1844, F. O. 83/2382, Appendix No. 15 in Public Records Office, London).

20. It thus appears clear that no objection was ever validly raised against the adoption by Texas of

the three leagues extent of its territorial waters, both during the period of its existence as an independent Power from 1836 and 1845, and equally in the subsequent official pronouncements of the United States Government.

The Doctrine of the Continental Shelf

21. There is an additional relevant ground, in my opinion, why the claim of Texas ought to succeed in the present action. Whatever may be the divergent views regarding the maritime boundary of a State, there is no dispute as to the right of a State to exploit and explore the natural resources of the seabed and subsoil contiguous to its coasts beyond the limits of its territorial waters.

22. The exclusive right of the coastal State over the resources of the seabed and subsoil of the continental shelf and other submarine areas, constitutes a recognized principle of international law, and is irrespective of, and does not depend on, the traditional limits of the territorial waters upheld by a State. Thus both the United States and the United Kingdom, whilst supporting as a *general* principle the three-mile limit of territorial waters, have departed from this limit under the provisions of their respective legislative enactments.

23. In the case of Great Britain, such legislation goes back to the Cornwall Submarine Mines Act of 1858, which declared that "all mines and minerals lying below low-water mark under the open sea adjacent to, but not being part of the County of Cornwall,

are vested in Her Majesty the Queen in right of her Crown as part of the soil and territorial possessions of the Crown (21 & 22 Vict. c. 109, S. 2). This Act was followed by several similar enactments—down to the Petroleum (Production) Act, 1934, (24 & 25 Geo. V c. 36) which enacts that the Crown shall have the exclusive right of searching and boring for and getting petroleum existing in its natural condition in strata. The Rules applicable to the Act cover marine areas outside the territorial waters. In the case of the United States, the main provision is the Proclamation of the President of September 28, 1945, submitting to the jurisdiction and control of the United States, the natural resources of the subsoil and seabed of the continental shelf contiguous to the coasts of the United States.

24. The view that the rules regarding the extent of the State's territorial waters do not apply to the subsoil of the sea is further reflected in the replies submitted by several Governments to the International Law Commission of the United Nations. (Docs. A/CN 4/99 and A/CN 4/99 Add. 1, 2 and 8), and by the adoption of specific provisions on the subject by the Commission in its Report of 2nd July, 1956, and by the Geneva Conference on "The Law of the Sea" of April, 1958.

25. The development of the doctrine of the continental shelf, of which the *Submerged Lands Act of 1953* is an offshoot, found its first support during the Second World War, when the United

Kingdom concluded a treaty with Venezuela in February 26, 1942, regarding the submarine natural resources in the Gulf of Paria. Under this treaty, the two countries agreed not to interfere with one another in the exploitation of these resources beyond a boundary line about 70 miles in length and 35 miles in breadth in the waters between the island of Trinidad and the Venezuelan mainland (L. N. T. S., Vol. 205, p. 122 and S. R. & O. (1942, Vol. 1, p. 919)). The purpose of this treaty was clearly to exclude third states from the exploitation of oil in this area, viz, to assume an occupation of its seabed in the form of an extension of the land territory of the two countries. The two Proclamations of the President of the United States which followed on September 28, 1945, and to which reference has already been made, extended in substance the territorial range of American maritime jurisdiction beyond the traditional three-mile doctrine in relation to the natural resources of the subsoil and bed of the continental shelf, and of the conservation and control of the fisheries contiguous to the coasts of the United States. The American example was followed by several Arab Sovereigns and Chiefs in the Middle East, by British Orders in Council extending the territories of West Indian British possessions to the sea-covered shelves of the Islands and also by many States of Central and South America, although in the latter case their declarations go much farther than the British and

American legislation. It thus appears that an ever increasing number of States have asserted jurisdiction over areas lying beyond the limits of their territorial sea.

26. The International Law Commission of the United Nations has discussed the problem of the continental shelf at its several sessions at Geneva from 1951 to 1956. Its work represents the accumulated study of one of the most authoritative bodies in international law, and was substantially approved by the Geneva Conference on the "*Law of the Sea*" in its Convention on "*The Continental Shelf*" which, in so far as is relevant to the present case, includes the following article:

> 1. The coastal State exercises over the continental shelf rights for the purpose of exploring it and exploiting its natural resources.
>
> 2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities or make a claim to the continental shelf without the express consent of the coastal State. (Article 2 in A/Conf. 13/L. 55, 28th April, 1958).
>
> 3. The rights of coastal State over the continental shelf do not depend on occupation, effective or national, or on any express proclamation.

27. It is, of course, within the power of the U .S. Congress to pass legislation on the rights of the United States over the natural resources of its continental shelf, as it is within its powers to apportion these rights amongst the States comprising the Federation. And as held by this Court in *Alabama v. Texas* (1945) (347 U. S. 272), Congress has the power "to dispose validly of federal property".

28. It follows that by virtue of the grant incorporated in the *Submerged Lands Act of 1953*, the State of Texas is entitled to the said lands and natural resources.

29. It should be added that this conclusion on the right of the State of Texas to a three league maritime belt is not, in my opinion, contrary to any rule of International Law. Although the Gulf of Mexico is too wide to be considered in its entirety as a "territorial" bay, there are certain portions of it, not exceeding nine miles in extent, which could be made the subject of prescriptive or historic rights. In my opinion there were special circumstances justifying the adoption of the three-league limit by Texas in 1836, such as the physical characteristics of the sea area adjacent to the coasts of Texas, the shallowness of its waters, the very limited use made by international navigation and fisheries of this area, and the fact that it did not trespass on any

vested rights of other States. Texas was accordingly entitled, in my view, to fix in 1836 her maritime boundary at three leagues and this boundary has now acquired, after a prescriptive period of over a century, the character of a historic right entitled to recognition both under the *Submerged Lands Acts* and under the *new doctrine of the Continental Shelf.*

Conclusions

In conclusion, I am of opinion that:

1. The Republic of Texas as an independent Power from 1836 to 1845, enjoyed the ownership and jurisdiction of all lands, minerals and other natural resources underlying the sea three marine leagues seaward from the ordinary lower-water mark and from the outer limit of inland waters on its coasts.

2. These rights are expressly recognised by international law and have also been recently incorporated in the Convention on "The Continental Shelf" adopted by the United Nations Conference on "The Law of the Sea" held at Geneva from February to April, 1958.

3. The *Submerged Lands Act of 1953* granted to the State of Texas the ownership and jurisdiction of the lands, minerals and all other natural resources within the distance of three marine leagues seaward

from the coast of Texas, and that such grant does not offend any principle of international law.

/s/C. John Colombos

The Temple, E. C. 4.

14th July, 1958.

EXHIBIT III

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Mexico, D. F.

Telefono
13-90-18

SANTIAGO OÑATE
Abogado

July 26, 1958

Memorandum Concerning the Three League Boundary Between Texas and Mexico and Between the United States and Mexico

By Santiago Oñate, Abogado.*

In the preparation of this memorandum, which is based upon the Constitution, Laws, and Treaties to which Mexico has been a party and other documtary records in the archives of the Republic of Mexico, my principal research has been related to the question of the Three League Boundary between the Republic of Texas and Mexico and the United States and Mexico, rather than that of "International Territorial Waters" in the family of nations.

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1. On the 19th of December, 1836, the Republic of Texas, after it had seceded from Mexico, passed an act, by virtue of which it defined its boundaries, in the following terms:

> "Section 1. *Be it enacted by the senate and house of representatives of the republic of Texas, in congress assembled, That from and after the passage of this act*, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande."

TREATIES

2. On the 1st. of March, 1845, a resolution of the Congress of the United States approved the incorporation of Texas to the Union: the Congress of Texas gave its acquiescence to the aforementioned resolution on the 13th of October, 1845, and President Polk ratified the incorporation of Texas by treaty on the 29th of December, 1845. (The international agreement thus consummated is fully reported in 4 Miller, U. S. Department of State, pp. 689-739, Treaties and Other International Acts of the United States of America.)

3. President Polk sent Mr. John Slidell as American Minister to settle the difference or controversy between the United States and Mexico, and gave instructions to Mr. Slidell which are dated on the 10th of November, 1845, and which were signed

by Mr. James Buchanan as Secretary of State. By virtue of these instructions Mr. Slidell should obtain from Mexico acknowledgement or acceptance of the boundary line "fixed by the Congress of Texas, and approved by President Polk in 1845". Mr. Slidell was not accepted by Mexico, on the grounds that he should exhibit credentials as Extraordinary Minister, instead of Resident Minister.

4. Mr. Nicholas Trist was sent by President Polk to agree on a Treaty of Peace with Mexico, in accordance with Instructions dated on the 15th of April, 1847, and with a projet or draft of the Treaty. Article IV of this projet of the Treaty reads: "Art. IV. The boundary between the two Republics shall start in the Gulf of Mexico, *three leagues* from the mouth of the Rio Grande."

5. Don Pedro María Anaya, President of Mexico, gave instructions to the Commissioners of Mexico in the terms of the document dated December 30, 1847, to try and obtain that the matter be settled by arbitration, and in case this was not possible to fix the limits designating natural boundaries, which should not surpass the following:

> "4th. The divisory line between the two Republics shall start in the Gulf of Mexico, *three leagues* from land, in a point in front of the mouth of the Rio Bravo del Norte."

6. In the Treaty of Guadalupe Hidalgo of 1848, the boundary fixed in Article 5, is the following:

> "The Boundary line between the two Republics shall start in the Gulf of Mexico, *three*

leagues from land in front of the Rio Grande, also called Rio Bravo del Norte."

I may point out the fact that immediately after the approval of the Treaty of Guadalupe Hidalgo, its constitutionality was questioned by eleven members of the House of Representatives of the Congress of the Republic of Mexico, but that the Supreme Court of this Country dismissed the action without hearing the merits, because any ruling by the Courts would constitute an invasion of the power of the other branches of Government.

7. The Treaty of Mesilla of 1854 also known as the Gadsden Purchase, entered into by and between the Republic of Mexico and the United States of America, ratified and confirmed the three league provision of the Treaty of Guadalupe Hidalgo. Subsequent treaties have ratified and confirmed the three league boundary. It is pertinent to assert that on the 13th of April of 1937 the Governments of Mexico and the United States amended Article 8 of the above-mentioned Treaty of Mesilla of 1854 and thus recognized the validity and force of said Treaty.

8. By several treaties Mexico has acknowledged that territorial waters comprise at least three leagues, the following should be mentioned:

a) Treaty between Mexico and Norway and Sweden (October 10, 1886) Article VIII declares a territorial sea of "three leagues."

b) Treaty with Ecuador (10th of July, 1888) speaks of twenty (20) kilometers of territorial waters.

c) Treaty with Great Britain of 1889 considers "three leagues", but refers only to customs vigilance.

d) Treaty with República Dominicana (19th of June, 1891), declares "three-leagues" as territorial sea.

e) Treaty with Italy (July 28, 1891) fixes twenty (20) kilometers as territorial sea.

f) Treaty with El Salvador (November 17, 1893) recognizes a territorial sea of twenty (20) kilometers.

9. The Mexican Constitutions, including the Constitution of 1917, now in force, do not declare the extent of territorial sea. The Constitution of 1917 only mentions that Mexico has sovereignty to the extent fixed by International Law.

10. The Ley de Bienes Inmuebles de la Nación, dated December 18, 1902, declared:

> "Art. 4. The territorial sea to the distance of three maritime miles, measured from the line of the lowest flow in the coast or on the shores of the islands that form a part of the national territory."

The above-quoted Ley de Bienes Inmuebles de la Nacíon, did not intend and could not under Mexican Law, supersede, invalidate, denounce or amend previous International Treaties, such as that of Guadalupe Hidalgo, that of Mesilla and the others cited in

paragraph 8 of this memorandum. (Article 126 of the Mexican Constitution of 1857, applicable in the year of 1902, established the inviolability of said Treaties.)

11. President Cardenas enacted a decree (August 31, 1935), by virtue of which Mexico declared its territorial sea equivalent to nine maritime miles (three leagues). It is important to point out that in the preamble of this decree the followinng reasons were expressed:

a) That the Constitution of 1917 in Article 27 states that territorial sea should extend to the limit approved by International Law.

b) That the Hague Conference of 1930 for the Codification of International Law revealed that there was no uniform criterion, nor a custom, in International Law, with respect to territorial seas.

c) That Mexico has signed no Treaties declaring that territorial waters comprise less than three leagues (nine miles).

12. The Ley General de Bienes Nacionales (3rd of July, 1942 and 26th of August, 1944) declares that territorial waters comprise nine maritime miles (three leagues) or 16,668 meters.

Conclusion

My opinion according to Mexican Law is as follows:

I. The three-league boundary between the United States and Texas on the one hand, and

Mexico on the other, had its origin in the act of the Republic of Texas *(I Laws of the Republic of Texas*, p. 133) and was carried forward in the Treaty of Guadalupe Hidalgo and subsequent treaties and conventions between the United States and Mexico.

II. By a number of treaties Mexico has acknowledged that "territorial waters" comprise at least three leagues.

III. Mexico has fixed its territorial waters in accordance with the three-league limit on the basis of the treaties it has signed.

IV. There presently exists between the Republic of Mexico, on the one hand, and the United States on the other, a boundary that starts in the Gulf of Mexico "three leagues from the land in front of the Rio Grande . . ."

Respectfully submitted,

/s/ Lic. Santiago Oñate.

SO)mjm

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EXHIBIT IV

THREE LEAGUES AS A RECOGNIZED LIMIT—1763-1899

Year	Source	English Text	Original Text
1762	Articles III and XVII, Preliminary Treaty between Great Britain, France and Spain.	"Article III. And his Brittanic Majesty agrees to allow the subjects of the Most Christian King freedom to fish, in the Gulf of St. Lawrence, on condition that the subjects of France do not exercise the said fishery, but at distance of 3 leagues from all the coasts belonging to Great Britain,..."	
1763	TREATY of Paris, Great Britain and France, 1 B. F. S. P. (1763)	". . . on condition that the Subjects of France do not exercise the said Fishery but at the distance of 3 leagues from all the coasts belonging to Great Britain, . . ." (pp. 422-23)	
1779	Instructions to U.S. Ministers for a Treaty of Commerce with Breat Britain, III Wharton, *The Revolutionary Diplomatic Correspondence of the United States* (1889)	"You are therefore not to consent to any treaty of commerce with Great Britain without an explicit stipulation on her part not to molest or disturb the inhabitants of the United States of America in taking fish . . . excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war, if a nearer distance can not be obtained by negotiation." (p. 303)	
1781	PFEFFEL, GOTTLIEB C. *Principes du droit naturel* Colmar, 1781)	"In this regard one distinguishes the high sea from that which washes the coasts of a nation: the first is absolutely free to all nations; the second is deemed to be a part of the territory which it adjoins; this presumption is based on the *voluntary law* of nations, which has established the rule of three leagues."	"On distingue à cet égard la haute mer de celle qui baigne les côtes d'une Nation; la premiere est absolument libre à toutes les Nations; la seconde est censée faire partie du territoire qu'elle avoisine: cette préssomption est fondée sur *le droit des gens volontaire*, qui a établi la regle de trois lieues. (p. 56.)

Year	Source	English Text	Original Text
1785	PALEY, WILLIAM *The principles of moral and political philosophy* (London, 1785)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon shot, or three leagues, of their coast; . . ." (p. 79)	
1786	PALEY, WILLIAM *The principles of moral and political philosophy* (London, 1786)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coast; . . ." (p. 80)	
1787	PAYLEY, M. (sic) *Grundsätze der Moral und Politik* (Leipzig, 1787)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coasts; . . ." [In this case English is the original text.]	Was zur Sicherheit einer Nation nöthig ist, muss ihr billiger Weise zugestanden werden: also auch eine gewisse Herrschaft über ihre Meerbusen, Buchten und Häfen, und über die dran gränzenden Meere, d.h. so weit ein Kanonenschuss reicht, oder bis auf die Entfernung von 3 Meilen von der Küste. (p. 106.) *Note.* At this period in Germany one *Meile* was used to mean one *league*.
1788	PALEY, WILLIAM *The principles of moral and political philosophy* (Philadelphia, 1788)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coasts; . . ." (p. 79.)	
1788	PALEY, WILLIAM *The principles of moral and political philosophy* (London, 1788)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coast; . . ." (p. 79.)	

1789	MARTENS, G[EORGE] F[REDRICH] von, *Précis du Droit des Gens Moderne de l'Europe fondé sur les Traités et l'Usage* (Gottingue, 1789)	The usage commonly accepted extends the rights of the lord of the coasts over straits, and over the adjacent sea generally up to the range of a cannon installed on the coast; that is to say up to three leagues from the coast, and that is what a nation can claim, at least today.	L'usage généralement reconnu étend les droits du maitre du rivage sur les detroits, & sur la mer voisine en général jusqu'à la portée du canon placé sur le rivage; c.a.d. jusqu'à trois lieues du rivage, & c'est là ce qu'une nation peut prétendre de moins aujordhui. (p. 189)
1790	PALEY, WILLIAM *The principles of moral and political philosophy* (London, 1790)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coast; . . ." (Vol. I, p. 80.)	
1791-1794	PALEY, WILLIAM *The principles of moral and political philosophy* (London, 1791-1794)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coast; . . ." (Vol. I, p. 79.)	
1792	GUNTHER, Karl Gottlob *Europäisches Völkerrecht*, (Altenburg, 1792)	d) In the Treaty of Paris of 1763. Art. 5. Fishing in the Bay of St. Lawrence was conceded to the French among others provided that the French subjects could not exercise said fishing but to a distance of three leagues from all the coasts belonging to Great Britain.	d) Im Pariser Frieden 1763. Art 5 wurde unter andern den Franzosen die Fischerey im Meerbusen St. Lawrent bewilligt à condition que les sujets de la France n'exercent la dite pêche qu'à la distance de trois lieues de toutes les côtes appartenantes à la Grande Bretagne. (p. 204.)
1793	PALEY, WILLIAM *The principles of moral and political philosophy* (Dublin, 1793)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coasts; . . ." (p. 80.)	
1793	Letter, Thomas Jefferson Secretary of State, to Mr. Genet, Minister of France, 1 *American State Papers* (Class 1, Foreign Affairs)	"Some intermediate distances have also been insisted on, and that of three sea-leagues has some authority in its favor." (p. 183.)	

Year	Source	English Text	Original Text
1793	The writings of THOMAS JEFFERSON. Letters to the French and British ministers on November 8 and 10 of 1793. The P. Leicester Ford ed. Vol. VI, 1792-1794	Some intermediate distances have been insisted on, and that of the three sea-leagues had some authority in its favour. (pp. 440-441.) (The same sentence in both letters.)	
1793	*No Jacobin* The Works of Alexander Hamilton, H. C. Lodge Ed., Vol. IV, 1885	What this distance is remains a matter of some uncertainty, though it is an agreed principle that it at least extends to the utmost range of cannon shot, that is, not less than four miles. But most nations claim and exercise jurisdiction to a greater extent. Three leagues, or nine miles, seem to accord with the most approved rule, ... (p. 206.)	
1796	MARTENS, GEORG FRIEDRICH VON *Einleitung in das positive Europäische Völkerrecht* (Göttingen, 1796)	. . . . a nation can appropriate to itself the parts of the sea immediately bordering upon it, and that according to a natural and now generally recognized principle, at least to such a distance as it can be swept by cannon fire from the shore. (b) (b) Pfeffel, in *principes du droit naturel*, Bk. III, Chap. IV, Sec. 15, gives the distance of three lieues [leagues] as the principle which is now traditional. This has also been accepted in many treaties, although the range of no cannon is that far, especially over the sea.	. . . kann eine Nation auch die zunächstangrenzenden Theile des Meeres (mare proximum) sich zueignen, und zwar nach einem natürlichen und jetzt allgemein anerkannten Grundsatze a) wenigstens so weit, als sie dasselbe von dem Ufer aus mit Canonen bestreichen kann b). b) Pfeffel in *principes du droit naturel* L. III. Cap. IV. §. 15. giebt als jetzt herkömmlichen Grundsatz die Entfernung von 3 lieues an. Dieser ist auch in vielen Verträgen angenommen, obgleich keine Canone, zumahl über See, so weit trägt. (p. 46.)

1799	PALEY, WILLIAM *The principles of moral and political philosophy* (London, 1799)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coast; . . ." (p. 80.)	
1801	PALEY, WILLIAM *The principles of moral and political philosophy* (Boston, 1801)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coasts; . . ." (p. 79.)	
1801	MARTENS, GEORGE FREDERIC de, *Précis du Droit des Gens Moderne de l'Europe fondé sur les Traités et l'Usage* (Gottingue, 1801)	Today all nations of Europe agree that, as a rule, straits, gulfs, and the adjacent sea belong to them *at least* up to fire range of a cannon, which might be placed on the coast. In many treaties they have even adopted the more generalized principle of three leagues. (b) (b) Pfeffel, *Principes du droit naturel*, Bk. III, ch. iv, §. 15.	Aujordhui toutes les nations de l'Europe conviennent, que dans la règle les detroits, les golphes, la mer voisine lui appartiennent pour le moins jusqu'à la portée du Canon, qui pourrait être placé sur le rivage. Dans nombre de traités on a même adopté le principe plus étendu des trois lieues b). b) Pfeffel *Principes du droit naturel.* Liv. III. Chap. IV, §. 15. (pp. 71-72.)
1802	MARTENS, [GEORGE FREDRICH] von, *Compendium of the Law of Nations.* Translated by William Cobbett. (London, 1802.)	A custom generally acknowledged, extends the authority of the possessor of the coast to a cannon shot from the shore; that is to say, three leagues from the shore, and this distance *is the least*, that a nation ought *now* to claim, as the extent of its dominion on the seas.* * Some have had recourse to arbitrary distances. See Loccenius, *de jure maritimo*, in Heinecii, *scriptores rei marit*, p. 921; Bodinus, *de republica*, book 1, chap. 10, p. 170. ed. of Paris. (p. 162.)	

Year	Source	English Text	Original Text
1803	RAYNEVAL, Joseph Mathias Gérard de. *Institutions du Droit de la Nature et des Gens.* 2nd ed. (Paris, 1803)	But the extent of this ownership is not determined by a uniform rule: some carry it out to thirty leagues, others only to three; others fix it at the range of cannon placed on the seashore.	Mais létendue de cette propriété n'est pas déterminée par une règle uniforme: les uns la portent à trente lieues, d'autres seulement à trois; a'autres la fixent à la portée du canon placé sur le bord de la mer. (p. 161.)
1809	PALEY, WILLIAM *The principles of moral and political philosophy* (London, 1809)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coast; . . ." (p. 79.)	
1812	CHITTY, J. *A Treatise on the Game Laws, and on Fisheries* (London, 1812)	And most of the modern writers upon the law of nations agree that each state is mistress of the sea on all sides within cannon shot of her coasts, which is explained to mean *three leagues*... (p. 243.)	
	PALEY, WILLIAM *The principles of moral and political philosophy* (Cambridge, 1817)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coasts; . . ." (Vol. I, p. 80.)	
1817	SCHMALZ, [Theodor A. H.] GEHEIMEN RATH *Das Europäische Völker-Recht* (Berlin, 1817)	"It was believed (in fact arbitrarily enough) that the sea must belong to the land as far as it can be contested from the land; and one can contest it as far as the shot of a gun can sweep it from the shore; this itself was assumed with even more reckless arbitrariness to be three leagues. Yet, as was said, this seems actually to have become the fundamental principle of the courts. Only Great Britain wished in the North Sea to remove the herring fish of the Dutch ten English miles from its coasts; Denmark wishes to check the ships of other peoples at four German miles from Iceland."	"So weit vom Lande es bestritten werden könne, meinte man, (in der That willkührlich genug) müsse das Meer zum Lande gehören; und bestreiten konne man es, so weit der Schuss des Geschützes vom Ufer es bestreichen möge; dies selbst nahm man mit noch ungebundenerer Willkühr auf 3 Lieues an. Doch, wie gesagt, dies scheint der Grundsatz der Höfe wirklich geworden zu seyn. Nur Grossbritanien wollte in der Nordsee den Heeringsfang der Holländer 10 englische Meilen von seinen Küsten entfernen; Dännemark will auf 4 deutsche Meilen von Island die Schiffe andrer Völker zurückhalten." (p. 141.)

1817	SCHMALZ, [Theodor A. H.] GEHEIMEN RATH *Das Europäische Völker-Recht* (Berlin, 1817)	"In particular the state can in its territory undisputedly reserve fishing for its own subjects alone and can exclude foreign fishers. On the other hand, in the open sea, out beyond its allowed territory no state can prevent them from fishing, though it can prevent the drying of the fish on its own coast. On this account, however, nations have often extended their territory out beyond the allowed three leagues, and also Denmark has demanded for Greenland fifteen and for Iceland four miles for exclusive fishing."	"Insbesondre kann der Staat in seinem Gebiete unstreitig den Fischfang seinen Unterthanen allein vorbehalten, und fremde Fischer ausschliessen. Dahingegen im freien Meere, über sein zugestandenes Gebiet hinaus, kann kein Staat die Fischerey ihnen verwehren, wenn er gleich das Trockenen der Fische auf seiner Küste wehren kann. Darum aber haben oft Nationen ihr Gebiet über die zugestandenen drei Lieues hinaus ausgedehnt, und auch Dänemark für Grönland fünfzehn, für Island vier Meilen zum ausschliesslichen Fischfange gefordert." (p. 188.)
1818	PALEY, WILLIAM *The principles of moral and political philosophy* (London, 1818)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coast; ..." (p. 80.)	
1819	SCHMELZING, JULIUS *Systematischer Grundriss des praktischen europäischen Völker-Rechts* (Rudolstadt, 1819)	3. An admittedly arbitrary assumption! — Although no heavy artillery (cannon) reaches for 3 leagues, still this distance is now generally assumed. Certainly this assumption is attested by several treaties between states. See Pfeffel *principes du droit naturel*, Book III, Chap. IV, No. 15.	3. Eine freilich willkürliche Annahme! —obleich kein schweres Geschüss (Kanone) auf 3 lieues weit reicht, so wird diese Entfernung doch nunmehr gewöhnlich angenommen. Schon durch mehrere Verträge zwischen Staaten ist diese Annahme beurkundet. S. Pfeffel principes du droit naturel, Lib. III, Cap. IV, § 15. (II, 13.)

Year	Source	English Text	Original Text
1821	MARTENS, GEORGE FREDERIC de, *Précis du Droit des Gens Moderne de l'Europe fondé sur les Traités et l'Usage* (Gottingue, 1821)	Today all nations of Europe agree that, as a rule, straits, gulfs, and the adjacent sea belong to the 'lord of the coast' *at least* up to fire range of a cannon which might be placed on the coast. In many treaties they have *even adopted* the more generalized principle of three leagues. (b) (b) Pfeffel, *Principes du droit naturel*, Bk. III, ch. iv, s. 15; Pestel, *Selecta capita juris gentium maritimi*, sect. 9; Gunther, *E. V. Recht*, T. II, p. 38 and following.	Aujordhui toutes les nations de l'Europe conviennent, que dans la règle les detroits, les golphes, la mer voisine appartiennent au maitre du rivage pour le moins jusqu'à la portée du Canon, qui pourrait être placé sur le rivage. Dans nombre de traités on a même adopté le principe plus étendu des trois lieues b). b) Pfeffel *Principes du droit naturel.* Liv. III, Chap. IV. §. 15; Pestel, *Selecta capita juris gentium maritimi*, sect. 9; Gunther, *E. V. Recht*, T. II, p. 38 et suiv. (pp. 85-86.)
1822	PALEY, WILLIAM *The principles of moral and political philosophy* (Candaigua [N.Y.] 1822)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coasts; ..." (p. 80.)	
1822	PALEY, WILLIAM *The principles of moral and political philosophy* (London, 1822)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coast; ..." (p. 79.)	

1823	SCHMALZ, M. *Le Droit des Gens Européen* (Paris, 1823)	In Europe it seemed at first that the system adopted had been the opinion of the jurisconsults who had wanted to treat this matter philosophically. According to these principles, the sea was to belong to the continent as far as the defense of the coasts could be extended over it, taking as a measure the range of a cannon-ball; but since it has been rather arbitrarily set at three nautical leagues, Great Britain is the only power which has pushed its claims farther in this respect, by wanting to forbid Holland herring-fishing off the coasts of the North Sea up to a distance of thirty English miles, just as in Iceland, Denmark claims to keep all foreign ships at a distance of four German miles (seven leagues).	En Europe on sembloit d'abord avoir adopté pour système, l'opinion des jurisconsultes qui ont voulu traiter cette matière en philosophes. D'après ces principes, la mer devoit appartenir au continent aussi loin que la défense des côte peut s'étendre sur elle, en prenant pour mesure la portée d'un boulet de canon; mais depuis, elle a été fixée assez arbitrairement, à trois lieues marines. La Grande-Bretagne est la seule puissance qui ait poussé ses prétentions plus loin à cet égard, en voulant interdire aux Hollandais la pêche du hareng sur les côtes de la Mer-du-Nord jusqu'a la distance de trente milles anglais, comme en Islande, le Danemarck prétend tenir éloignés de quatre milles d'Allemagne (sept lieues), tous les vaisseaux étrangers. (pp. 144, 145.)
1824	PALEY, WILLIAM *The principles of moral and political philosophy* (London, 1824)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coast; ..." (p. 80.)	

Year	Source	English Text	Original Text
1825	Excerpt from Note to Polignac (France) from Canning (Great Britain), *February 25, 1825*, in H. A. Smith, *Great Britain and the Law of Nations* (London, 1935)	England and France . . . may agree each to respect in the other generally or in some specified instance, an assmption of dominion in the Sea, at two, three, twenty leagues distance from the Coast of the assuming party. (pp. 149-150.)	
1825	PALEY, WILLIAM *The principles of moral and political philosophy* (Boston, 1825)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coasts; ...." (p. 80.)	
1827	PALEY, WILLIAM *The principles of moral and political philosophy* (Bridgeport [Conn.] 1827)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coasts; ..." (p. 79.)	
1827	PALEY, WILLIAM *The principles of moral and political philosophy* (Boston, 1827)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coasts; ..." (Vol. I, p. 79.)	

1828	PALEY, WILLIAM *Paley's Moral Philosophy, abridged and adapted to the Constitution, Laws, and Usages of the United States of America by B. Judd, A.M.* (New York, 1828)	... therefore, medical springs, and inexhaustible fisheries, ought to be considered as public property. The same may be said of navigable waters, except such a portion contiguous to any country, as may be necessary for the protection and security of the country; which includes the creeks and bays, and the distance of three leagues from the land. (p. 32.)	
1831	PALEY, WILLIAM *The principles of moral and political philosophy* (Boston, 1831)	What is necessary for each nation's safety we allow; as their own bays, creeks ,and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues of their coast; ... (p. 81.)	
1831	MARTENS, G[EORGE] [FREDRICH] de, *Précis du Droit des Gens Moderne de l'Europe fondé sur les Traités et l'Usage* avec des notes de M.S. Pinheiro-Ferreira. (Paris, 1831)	Today all nations of Europe agree that, as a rule, straits, gulfs, and the adjacent sea belong to the 'lord of the coast' *at least* up to fire range of a cannon which might be placed on the coast. In many treaties they have even adopted the more generalized principle of three leagues. (b) (b) Pfeffel, *Principes du droit naturel*, Bk. III, ch. iv, s. 15; Pastel, *Selecta capita juris gentium maritimi*, sect. 9.; Gunther, *E. V. Recht*, T. II, p. 38 and following.	Aujordhui toutes les nations de l'Europe conviennent que dans la règle les detroits, les golphes, la mer voisine appartiennent au maitre du rivage pour le moins jusqu à la portée du Canon, qui pourrait être placé sur le rivage. Dans nombre de traités on a même adopté le principe plus étendu des trois lieues b). b) Pfeffel *Principes du droit naturel.* Liv. III, Chap. IV. §. 15; Pastel, *Selecta capita juris gentium maritimi*, sect. 9; Gunter, *E. V. Recht*, T. II. u. 38 et suivi. (p. 124.)
1832	*The Edinburgh Encyclopaedia*, conducted by David Brewster. First American Edition, Vol. XI (Philadelphia, 1832)	5. The sea surrounding the coast, as well as those parts of it which are landlocked, such as the roads, little bays, or gulfs, etc. as well as those which are situated within cannon shot of the shore, (that is, within the distance of three leagues,) are so entirely the property, and subject to the dominion of the master of the coast, ... (pp. 762-63.)	

Year	Source	English Text	Original Text
1832	PALEY, WILLIAM *The principles of moral and political philosophy* (Boston, 1832)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coasts; ...." (p. 79.)	
1832	The Buenos Ayres Minister to the American Chargé d'Affaires, 14 August 1832 (Enclosure: Report of the Political and Military Commandant of the Malvinas, 10 August 1832, *British and Foreign State Papers* (1832-1833), Vol. 20.	Perhaps this concession was made to them on account of the French being then Masters of Placentia, which they ceded to the English, and of Canada, to which Continent the River St. Lawrence belonged. Thus it was that they lost it by the Vth Article of the Treaty of 1763, by which they were only permitted to fish in the Gulf, at the distance of 3 leagues from the English Coasts, and without Cape Breton, at the distance of 15: all which was confirmed, with variations, by the IVth, Vth, and VIth Articles of the Treaty of Versailles, in 1783. (p. 427.)	
1833	FRIEDRICH SAALFELD *Handbuch des positiven Völkerrechts* (Tübingen, 1833)	While many treaties extend it to three, indeed even to ten leagues, theoretically the extent of the territorial sea has been assumed often as the visible horizon, or as far as a human voice carried, or as far as a javelin might be thrown into the sea.	Während manche Verträge sie bis auf drei, ja selbst bis auf zehn Lieues ausdehnen, hat die Theorie oft den sichtbaren Horizont, oder so weit die Stimme eines Menschen reiche, oder so weit ein Wurfspiess in die See hinein trage, als die Ausdehnung des Seegebiets angenommen. (p. 94.)
1835	KOLDERUP-ROSENVINGE *Grundrids af den positive Folkeret* (Copenhagen, 1835)	3 . . . Sometimes the dominion over *mare proximum* in treaties is determined at a certain number of miles, as for example the Treaty of Paris between France, England, and Spain, 1763 Art. 5 (3 and 15 leagues).	3. . . . Undertiden er Herredommet over mare proximum i Traktater bestemt til et vist Untal Mile, s.t.Eg.Tr.til Paris mellum Frankerig, England og Spanien 1763 Art. 5 (3 og 15 lieues). (pp. 65-66.)

1837	*Nesselrode* (Russia) *to Durham* (England) *Letter of March 9, 1837* Foreign Office Records, Embassy and Consular Archives, Russia. F.O. 181. Correspondence 120, Notes from Russian Ministers.	In the first place, as far the distance of three miles established by English legislation, can this be considered a universal principle, authorized by the Law of Nations? We are far from agreeing with this opinion. In fact, if one refers to the authority of the legal writers, one becomes convinced that there has never existed any general rule for determining the jurisdiction that any Power whatever has the right to exercise over the seas off its coasts. Some extend this right to 60 miles out, to the visible horizon, to three leagues; while others claim that its limit is restricted to mere cannon-range.	D'abord, la distance de trois milles fixée par la législation anglaise pour l'exercise de ce droit, peut elle être considerée comme un principe universel et consacré par la loi des nations? Nous sommes loin de partager cette opinion. En effet, si l'on s'en refère à l'authorité des publicistes, on acquiert la conviction qu'il n'a jamais existé de règle général pour déterminer la jurisdiction qu'une Puissance quelconque a droit d'exercer sur la mer circonvoisine de ses côtes. Les uns étendent ce droit a 60 milles à l'horizon apparent, à 3 lieues de distance, tandisque les autres pretendent en restreindre les bornes a la portée seule du canon.
1837	*Nesselrode* (Russia) *to Durham* (England) *Letter of March 9, 1837* Foreign Office Records, Embassy and Consular Archives, Russia. F. O. 181. Correspondence 120. Notes from Russian Ministers.	...take for example the Treaty of Paris of 1763, which fixed free fishing rights in the Gulf of St. Lawrence at 3 leagues from the British coasts...	. . . témoin le traité de Paris de 1763 qui [a] fixé la liberté de pêcher dans le golfe St. Laurent à 3 lieues de distance des côtes Britanniques . . .
1838	Memorials, etc. to the British Government, complaining of the Aggressions of French Fishermen on the British coast — 1837, 1838, March 7, 1838 *B.F.S.P.*, Vol. 29.	That while your memorialists are prevented approaching within 3 leagues of the French coast for the purpose of fishing, the French boats are allowed to cast their nets with impunity close to our shores. (p. 1236.)	
1838	FORAMITI, FRANCESCO *Enciclopedia Legale ovvero Lessico Ragionato* (Venice, 1839)	Taking as a basis a less limited criterium an attempt was made by some to establish it at three French leagues.	Appoggiandosi ad un maggiore illimitato arbitrio, si volle fissarlo da alcuni a tre leghe francesi. (Vol. III, p. 367.)

Year	Source	English Text	Original Text
1840	English Foreign Office Archives. F.O. 75/1 p. 110 reverse. Draft of Convention for payment of debts of the Republic of Texas to Mexico.	...Six months from the notification of this Convention concludes a treaty of amity and boundary with the said republic of Texas establishing the following as the Boundary line between the two countries. Beginning at the mouth of the Sabine River and running West along the Gulf of Mexico three leagues from land to the mouth of the Rio Grande . . .	
1841	PALEY, WILLIAM *The principles of moral and political philosophy* (London, 1841)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coasts; ..." (p. 79.)	
1842	*The Encyclopaedia Britannica or Dictionary of Arts, Sciences, and General Literature.* Seventh Edition, Adam and Charles Black. (Edinburg, 1842)	The Dutch continue to fish even into the mouths of the Thames, and the French insist on their right to fish within a mile of the English coast, whilst they also claim the right of excluding our fishermen within a league of their own shores, and in some places three leagues... (pp. 591-92.)	
1842	LUCHESI-PALLI, FERDINAND *Principes du Droit Publique maritime,* Translated from Italian into French by J. Armand de Galiani. (Paris, 1842)	Since the time of the Republic, France continued to favor the freedom of fishing. And because there remained still some differences upon this matter, the Executive Council, authorized, in March, 1793, the municipality of Calais to undertake, at the *Dunes*, negotiations with the English commander, which resulted in declaring the fishing free within three leagues from the coasts.	Du temps la République, la France continua à favoriser la liberté de la pêche. Comme il subsistait encore des différends sur cet object, le Conseil Exécutif, dans le mois de mars 1793, autorisa la municipalité de Calais à traiter aux *Dunes* avec le commandant anglais d'une négociation qui rendit la pêche libre à trois lieues des côtes. (pp. 11-12.)
1844	BELLO, ANDRES *Principios de Derecho Internacional* (Lima, 1844)	Martens sets forth that in many treatises the *dominium* is recognized out to the distance of three leagues from the coast. (*Précis*, Book 2, Chapter 1, § 40.)	Martens sienta que en muchos tratados se reconoce el dominio hasta la distancia de tres leguas de la costa. (*Précis*, libro 2, capítulo 1°, § 40.)

1845	ARENDT, M. — *Essai sur la Neutralité de la Belgique.* (Brussels, Leipzig, 1845)	In agreements of this kind, the space agreed upon as being part of the maritime territory is sometimes of one league, sometimes three, . . .	Dans les conventiones de cette nature on accorde tantôt un espace d'un lieue tantôt de trois, . . . (p. 138.)
1845	ORTOLAN, THÉODORE *Règles Internationales et Diplomatie de la Mer.* 2nd. ed. (Paris, 1845)	. . . although the principle of the respect due to territorial waters is recognized by all treaties, these treaties do not agree so thoroughly upon the extent to be given in this case [war time] to these seas. Many fix it at two and three leagues; others at the range of a cannon shot; those [treaties] concluded with the Barbary powers extend it sometimes up to ten leagues.	. . . si le principe du respect qu'on doit aux mers territoriales neutres est reconu par tous les traités ces traités ne s'accordent pas aussi bien sur l'étendue à donner en ce cas à ces mers. Plusieurs la fixent a deux lieues et à trois lieues; d'autres la bornent à la portée du canon; ceux avec les puissances barbaresques la portent quelquefois jusqu'à dix lieues. (p. 180.)
1845	PALEY, WILLIAM *Paley's Moral and Political Philosophy, as condensed by A. J. Valpy, re-edited by Richard W. Green.* (Philadelphia, 1845)	"... What is necessary for each nation's safety may be allowed, even to the extent of three leagues from the coast; a limit far beyond the reach of any implements of war, by which the safety of the coast might be endangered." (p. 79.)	
1847	BELLO, ANDRES *Principos de Derecho Internacional* (Caracas, 1847)	Martens sets forth that in many treatises the *dominium* is recognized out to the distance of three leagues from the coast. (*Précis*, Book 2, Chapter 1, §. 40.)	Martens sienta que en muchos tratados se reconoce el dominio hasta la distancia de tres leguas de la costa. (*Précis*, libro 2, capítulo 1°, § 40). (p. 39.)
1848	*TREATY of Peace, Friendship, Limits and Setlement, between The United States and Mexico* — Signed at Guadalupe Hidalgo, February 2, 1848. *B.F.S.P.* Vol. 37.	V. The boundary line between the 2 Republics shall commence in the Gulf of Mexico, 3 leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea. (p. 569.)	

Year	Source	English Text	Original Text
1850	KALTENBORN, KARL V. *Kriegsschiffe auf neutralem Gebiet* (Hamburg, 1850)	Other authors accept three French leagues as prevailing in practice, as Klüber, I, 206 and Martens, I, 124.	Andere Autoren nehmen drei Französische lieues als in der praxis herrschend an, wie Klüber 1.206 und Martens I, p. 124.
1851	KALTENBORN VON STACHAU, CARL VON, BARON. *Grundsätze des praktischen Europäischen Seerechts* (Berlin, 1851)	Other authors similarly take three French leagues as controlling in practice, and the treaty of peace between England and France of 1763, Article 5, is cited as an example.	Andere Autoren nehmen ähnlich drei Französische Lieues als in der Praxis herrschend an und ist hier als Beispiel der Friede zwischen Frankreich und England von 1763, Art. 5 anzuführen . . .(II, 342.)
1851	KLUBER, JOHANN LUDWIG *Europäisches Völkerrecht* (Schaffhausen, 1851)	Many state treaties designate for adjacent seas a distance of three leagues, e. g., the Paris Peace of 1763, art. 5; . . .	Viele Staatsverträge bestimmen für benachbarte Meere eine Entfernung von drei Lieues, z. B. der Pariser Fr. von 1763, Art. 5 . . .(p. 144.)
1852	RANKIN, MELINDA *Texas in 1850* (Boston, 1852)	According to the boundary which Texas claims, the State extends from the Gulf of Mexico, three leagues from land, to the mouth of the Rio Grande. (p. 83.)	
1853	ORTOLAN, THÉODORE *Règles Internationales et Diplomatie de la Mer.* 2nd. ed. (Paris, 1853)	. . . although the principle of the respect due to territorial waters is recognized by all treaties, these treaties do not agree so thoroughly upon the extent to be given in this case [war time] to these seas. Many fix it at two and three leagues; others at the range of a cannon shot; those [treaties] concluded with the Barbary powers extend it sometimes up to ten leagues.	. . . si le principe du respect qu'on doit aux mers territoriales neutres est reconnu par tous les traités, ces traités ne s'accordent pas aussi bien sur l'étendue à donner en ce cas à ces mers. Plusieurs la fixent a deux lieues et a trois lieues; d'autres la bornent à la portée du canon; ceux avec les puissances barbaresques la portent quelquefois jusqu'é dix lieues. (T. I, p. 174.)
1853	*TREATY of Limits between The United States and Mexico, December 30, 1853* — 42. *B.F.S.P.*, Vol. 42.	According to Article V of the Treaty of Guadalupe Hidalgo, the limits between the 2 republics shall be as follows: Beginning in the Gulf of Mexico, 3 leagues from land, opposite the mou'h of the Rio Grande, as provided in Article V of the Treaty of Guadalupe	

1856	ORTOLAN, THÉORODE *Règles Internationales et Diplomatie de la Mer.* (Paris, 1856)	. . . although the principle of the respect due to territorial waters is recognized by all treaties, these treaties do not agree so thoroughly upon the extent to be given in this case [war time] to these seas. Many fix it at two and three leagues; others at the range of a cannon shot; those [treaties] concluded with the Barbary powers extend it sometimes up to ten leagues.	. . . si le principe du respect qu'on doit aux mers territoriales neutres est reconnu par tous les traités, ces traités ne s'accordent pas aussi bien sur l'étendue à donner en ce cas à ces mers. Plusieurs la fixent a deux lieues et a trois lieues; d'autres la bornent à la portée du canon; ceux avec les puissances barbaresques la portent quelquefois jusqu'à dix lieues. (p. 180.)
1856	PROCLAMATION of the President of The United States, relative to the Boundary Line between The United States and Mexico — Washington, June 2, 1856 — 11 Stat.	"Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the Vth Article of the Treaty of Guadalupe Hidalgo; thence, as defined in the said Article up to the middle of that river . . . (p. 793.)	
1857	Executive Document No. 108, 34th Cong. 1st Sess. Report of the United States and Mexican Boundary Survey by William H. Emory. (1857)	Under this arrangement, by which the boundary commission paid the expenses incidental to changes in its original plan of operations, and by which it was agreed that the hydrography should be done by the Coast Survey, and the astronomy and topography by the boundary commission, Lieut. Wilkinson, in command of the brig Morris, repaired at the appointed time to the mouth of the river and made soundings, marked on sheet No. 1, by which we were enabled to trace the boundary, as the treaty required, "three leagues out to sea." (p. 58.)	

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Year	Source	English Text	Original Text
1858	MARTENS, G[EORGE] F[REDERICH] de *Précis du Droit des Gens Moderne de l'Europe* Accompagnée des notes de Pinheiro-Ferreira et suivie d'une *Bibliographie* raisonnée du Droit des Gens par M. Ch. Vergé (Paris, 1858)	Today all nations of Europe agree that, as a rule, straits, gulfs, and the adjacent sea belong to the 'lord of the coast' *at least* up to fire range of a cannon which might be placed on the coast. In many treaties they have *even adopted* the more generalized principle of three leagues. (b) (b) Pfeffel, *Principes du droit naturel*, Bk. III, ch. iv, §. 15; Pestel, *Selecta capita juris gentium maritimi*, sect. 9; Gunther, *E. V. Rect*, T. II, p. 38 and following.	Aujordhuj toutes les nations de l'Europe conviennent, que dans la règle les detroits, les golphes, la mer voisine appartiennent au maitre du rivage pour le moins jusqu'à la portée du Canon, qui pourrait être placé sur le rivage. Dans nombre de traités on a même adopté le principe plus étendu des trois lieues b). b) Pfeffel *Principes du droit naturel.* Liv. III, Chap. IV. §. 15; Pestel, *Selecta capita juris gentium maritimi*, sect. 9; Gunther, *E. V. Recht*, T. II, p. 38 et suiv. (T. I. p. 143.)
1860	PALEY, WILLIAM *The principles of moral and political philosophy* (New York, 1860)	"What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coast; ..." (p. 80.)	
1864	BELLO, ANDRES *Principios de Derecho Internacional* (Valparaiso, 1864)	Martens sets forth that in many treatises the *dominium* is recognized out to the distance of three leagues from the coast. (*Précis*, Book 2, Chapter 1, §. 40.)	Martens sienta que en muchos tratados se reconoce el dominio hasta la distancia de tres leguas de la costa. (*Précis*, libro 2, capítulo 1°, § 40). (p. 50.)

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1864 MARTENS, G[EORGE] F[REDERICH] de *Précis du Droit des Gens Moderne de l'Europe.* Augmenté des notes de Pinheiro-Ferreira...et suivi d'une *Bibliographie* raisonnée du Droit des gens por M. Ch. Vergé (Paris, 1864)	Today all nations of Europe agree that, as a rule, straits, gulfs, and the adjacent sea belong to the 'lord of the coast' *at least* up to fire range of a cannon which might be placed on the coast. In many treaties they have *even* adopted the more generalized principle of three leagues. (b) (b) Pfeffel, *Principes du droit naturel*, Bk. III, ch. iv, §. 15; Pastel, *Selecta capita juris gentium maritimi*, sect. 9; Gunter, *E. V. Recht*, T. II, p. 38 and following.	Aujordhui toutes les nations de l'Europe conviennent, que dans la règle les detroits, les golphes, la mer voisine appartiennent au maitre du rivage pour le moins jusqu'à la portée du Canon, qui pourrait être placé sur le rivage. Dans nombre de traités on a même adopté le principe plus étendu des trois lieues b). b) Pfeffel *Principes du droit naturel.* Liv. III, chap. IV. §. 15; Pestel, *Selecta capita juris gentium maritimi*, sect. 9: Gunther, *E. V. Recht*, T. II, p.38 et suiv. (T. I, p. 141.)
after 1864 and before 1873 BELLO, ANDRES *Principios de Derecho Internacional* (Paris, after 1864 and before 1873)	Martens sets forth that in many treatises the *dominium* is recognized out to the distance of three leagues from the coast. (*Précis*, Book 2, Chapter 1, §. 40.)	Martens sienta que en muchos tratados se reconoce el dominio hasta la distancia de tres leguas de la costa. (*Précis*, libro 2, capítulo 1°, § 40). (p. 43.)

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Year	Source	English Text	Original Text
1866	THE PETERHOFF, 5 Wallace, 28. [Reporter's statement of the case.]	The territory of the United States, as is generally known, is separated on one part of its boundary from the republic of Mexico by the *Rio Grande*, a large stream, entering by a broad mouth, and by a course at that point nearly east, the Gulf of Mexico. At the mouth of the river a bar prevents the passage of vessels drawing over seven feet of water. By treaty between the two nations the boundary line begins *in* the Gulf three leagues from land opposite the mouth of the river, and runs northward from the middle of it. (p. 30.)	
1886	THE PETERHOFF, 5 Wallace, 28.	It was stipulated in the 5th article that the boundary line between the United States and Mexico should commence in the Gulf, three leagues from land opposite the mouth of the Rio Grande, and run northward with the middle of the river. (p. 51.)	
1873	BELLO, ANDRES *Principios de Derecho Internacional* (Paris, 1873)	Martens sets forth that in many treatises the *dominium* is recognized out to the distance of three leagues from the coast. (*Précis*, Book 2, Chapter 1, § 40.)	Martens sienta que en muchos tratados se reconoce el dominio hasta la distancia de tres leguas de la costa. (*Précis*, libro 2, capítulo 1°, § 40). (p. 47.)
1874	MADIEDO, MANUEL MARIA *Tratado de Derecho de Jentes, Internacional, Diplomatico, i Consular.* (Bogotá, 1874)	. . . it would be clearer, more precise and more expeditious to accept as maritime territorial waters those included between low tide on the coast and three leagues offshore; without distinction of capes or promontories, which exposes one to arbitrary decisions in the application.	Pero sería mas claro, preciso, expeditivo, aceptar como aguas marítimas territoriales, las comprendidas entre la baja mar de la costa a tres leguas hacia afuera; sin distinciones de cabos y de promontorios, que exponen en la aplicación a fallos arbitrarios. (p. 48.)

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1882	TREATY between Mexico and Guatemala, September 22, 1882. *Tratados y Convencions Vigentes*, Mexico City 1904.	"The boundary between the two nations shall forever be as follows: "1. From a point in the sea three leagues distant from the upper mouth of the River Suchiate, and thence following the deepest channel thereof to the point at which it intersects the vertical plane which crosses at the highest point of the volcano of Tacana,..."	Artículo III. "Los límites entre las dos naciones serán á perpetuidad los siguientes: — 1°. La línea media del río Suchiate, desde un punto situado en el mar, á tres leguas de su desembocadura, río arriba, por su canal más profundo, hasta el punto en que el mismo río corte el plano vertical que pase por el punto más alto del volcán de Tacaná . . ." (pp. 59-60.)
1882	BELLO, ANDRES *Principios de Derecho Internacional* (Paris, 1882)	Martens sets forth that in many treaties the *dominium* is recognized out to the distance of three leagues from the coast. (*Précis*, Book 2, chapter 1, § 40.)	Martens sienta que en muchos tratados se reconoce el dominio hasta la distancia de tres leguas de la costa. (*Précis*, libro 2, capítulo 1°, §40). (p. 47.)
1883	GOULD, JOHN M. *A Treatise on the Law of Waters* (Chicago, 1883)	The Republic of Texas defined its southern boundary as extending from "the mouth of the Sabine River and running west along the Gulf of Mexico, *three-leagues* from land to the mouth of the Rio Grande," and after the annexationof Texas, the State reaffirmed this right of jurisdiction. (p. 33, n. 1.)	
1886	US, Secretary of State Bayard, May 28, 1886, in 1 Moore, *International Law Digest*.	. . . same letter contains reference to three leagues, citing Fish's statement that this boundary line "applies only to Mexico and the United States." (p. 719.)	

Year	Source	English Text	Original Text
1886	TESTA, CARLOS *Le droit public international maritime*, translated into French from Portuguese by Ad. Boutiron. (Paris, 1886)	Nevertheless, all the treaties are not in agreement as to the extent and limits of the neutral waters; some fix it at the reach of cannon; other, at two or three leagues from the shore."	Toutefois, tous les traités ne concordent pas en ce qui concerne l'etendue et les limites des mers neutres; les uns les fixent à la portée de canon; les autres, à deux or trois lieues du litoral. (p. 74.)
1887	FELIX STOERCK *Das Seegebiet und die rechtlichen Grundlagen für den internationalen Verehr zur See.* in: *Handbuch des Völkerrechts* by Franz von Holtzendorff, Vol. II (Hamburg, 1887)	In Article 8 of this treaty [of 5 December 1882 between Mexico and Germany] the contracting parties agreed to regard the distance of three large sea miles (leguas marinas) [=8.997 nautical miles] as the boundary of territorial sovereignty on both their coasts measured from the line of low tide.	Im Art. 8 desselben kommen die vertragschliessenden Theile überein, als Grenze des Territorialhoheit an ihren beiderseitigen Küsten die Entfernung von drei grossen Seemeilen (leguas marinas) anzusehen, von der Linie der niedrigsten Ebbe gerechnet. (p. 476.)
1897	SCHUCKING, WALTHER MAX ADRIAN *Das Küstenmeer im Internationalen Rechte* (Göttingen, 1897) as translated in Henry G. Crocker, *The Extent of the Marginal Sea* (Washington, 1919)	". . . At the occasion of an international regulation of the Sound fisheries in 1874, Spain, the United States, Germany, Austria, Italy, Denmark, Holland and Belgium declared if ever the limit of the coastal sea should be determined by an international agreement, 3 sea leagues should be the minimum . . ." (pp. 427-428.)	". . . Gelegentlich der Verhandlungen über eine internationale Regelung der Sundfischerei 1874 haben Spanien, die Vereinigten Staaten, Deutschland, Oestreich, Italien, Dänemark, Holland und Belgien erklärt, sollte das Küstenmeer durch internationales Uebereinkommen begrantz werden, so seien 4 Seemeilen für sie das Minimum . . ." (p. 12.)

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1898 MARTENS, F. de *Recueil des Traités et Conventions de la Russie*, V. XII (1898)	Count Nesselrode replied to this with the following question: "Is it possible to consider that the distance of three miles fixed by English law is a universal principle established by international law? We do not agree with such a view. Far from it, for if we refer to the legal writers we are convinced that there has never been any general rule for the determination of the jurisdiction which any power has the right to exercise over the seas off its coasts. Some extend these rights to 60 miles out, to the visible horizon, to three leagues, while others would have it limited to the distance of a cannon shot."	Le comte Nesselrode répondit a cela en posant la question suivante: "La distance de 3 milles fixée par la législation anglaise pour l'exercice de ce droit de jurisdiction, peut elle être considérée comme un principe universel et consacrée par la loi des nations? Nous sommes loin de partager cette opinion. En effet, si l'on s'en réfère à l'autorité des publicistes, on acquiert la conviction qu'il n'a jamais existé de règle générale pour déterminer la jurisdiction qu'une Puissance quelconque a droit d'exercer sur la mer circonvoisine de ses côtes. Les uns étendent ce droit à 60 milles, a l'horizon apparent, à 3 lieues de distance, tandisque les autres prétendent en restreindre les bornes à la portée seule du canon" (sic!).

Year	Source	English Text	Original Text
1899	TREATY between Mexico and China, December 14, 1899. *Tratados y Convenciones Vigentes*, Mexico City 1904.	Art. XI. "The two contracting parties agree upon considering a distance of three marine leagues, measured from the line of low tide, as the limit of their territorial waters for everything relating to the vigilance and enforcement of the custom-house regulations and the necessary measures for the prevention of smuggling."	"Las dos Partes contratantes convienen en considerar la distancia de tres leguas marinas, medidas desde la baja marea, como límite de sus aguas territoriales para todo lo que se relaciona con la vigilancia y ejecución de las Ordenanzas de Aduanas y con las disposiciones necesarias para impedir el contrabando." (p. 462.)

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EXHIBIT V

Table of Sea Measure Equivalents

	Degrees of Latitude	Marine Miles	Marine Leagues	Meters
Degree	1	60	20	111,132.0
Leagues				
Marine	1/20	3	1	5556.7
French sea league	1/20	3	1	5556.7
Spanish sea league	1/20	3	1	5556.7
Mile				
Marine, Nautical, Geographical	1/60	1	.3333	1852.2
U. S. Stat. (land)	1/69.054	.8684	.28947	1506.347
German sea	1/15	4	1.333	7408.9
Norwegian sea	1/15	4	1.333	7408.9
Swedish sea	1/15	4	1.333	7408.9
Roman (ancient)	1/75.47	.795	.265	1472.5
Italian	1/60	1	.3333	1852.2
Myriameter	1/11.1132	5.3989	1.7996	10,000.0
Toise	.00015	.0009	.00003	1.6700

Appendix A

TEXAS BOUNDARY ACT, ANNEXATION AGREEMENT AND TREATY OF GUADALUPE HIDALGO

1. Republic of Texas Boundary Act, December 19, 1836, 1 Laws of the Republic of Texas, p. 133.

"AN ACT, to define the Boundaries of the Republic of Texas

"Sec. 1. Be it enacted by the senate and house of representatives of the Republic of Texas, in congress assembled, That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande, thence up the principal stream of said river to its source, thence due north to the forty-second degree of north latitude, thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning: and that the president be, and is hereby authorized and required to open a negotiation with the government of the United States of America, so soon as in his opinion the public interest requires it, to ascertain and define the boundary line as agreed upon in said treaty."

2. Joint Resolution for annexing Texas to the United States

Joint Resolution of the Congress of the United States, March 1, 1845, 28th Congress, 2nd Session, 5 Stat. 797.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in Convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

2. *And be it further resolved,* That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit: *First,* said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments; and the constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six. *Second,* said State, when admitted into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence belonging to said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind which may belong to or be due and owing said repub-

lic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the government of the United States. *Third*, New states, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the federal constitution. And such states as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latiude, commonly known as the Missouri compromise line, shall be admitted into the Union with or without slavery, as the people of each state asking admission may desire. And in such state or states as shall be formed out of said territory north of said Missouri compromise line, slavery, or involuntary servitude, (except for crime), shall be prohibited.

3. *And be it further resolved*, That if the President of the United States shall in his judgment and discretion deem it most advisable, instead of proceeding to submit the foregoing resolution to the Republic of Texas, as an overture on the part of the United States for admission, to negotiate with that Republic; then,

Be it resolved, that a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries, and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with the existing states, as soon as the terms and conditions of such admission, and the cession of the remaining Texian territory to the United States shall be agreed upon by the governments of Texas and the United States: And that the sum of one hundred thousand dollars be, and the same is hereby, appropriated to defray the expenses of missions and negotiations, to agree upon the terms of said admission and cession, either by treaty to be submitted to the Senate, or by articles to be submitted to the two Houses of Congress, as the President may direct.

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3. Joint Resolution Giving the consent of the existing Government to the annexation of Texas to the United States.

Joint Resolution of the Congress of Texas, June 23, 1845. 9 Laws of the Republic of Texas, Extra Sess. 1.

Whereas, the Government of the United States hath proposed the following terms, guarantees, and conditions, on which the people and territory of the Republic of Texas may be erected into a new State, to be called the State of Texas, and admitted as one of the States of the American Union, to wit: [Quot-

ed here was all of the Joint Resolution of the Congress of the United States of March 1, 1845, except paragraph 3.] And whereas, by said terms, the consent of the existing government of Texas is required,—Therefore,

Be it resolved by the Senate and House of Representatives of the Republic of Texas in Congress assembled, That the government of Texas doth consent, that the People and territory of the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of Government, to be adopted by the People of said Republic, by Deputies in Convention assembled, in order that the same may be admitted as one of the States of the American Union; and said consent is given on the terms, guarantees, and conditions set forth in the Preamble to this Joint Resolution.

Sec. 2. Be it further resolved, That the Proclamation of the President of the Republic of Texas, bearing date May fifth, eighteen hundred and forty-five, and the election of Deputies to sit in Convention, at Austin, on the fourth day of July next, for the adoption of a Constitution for the State of Texas, had in accordance therewith, hereby receives the consent of the existing Government of Txaes.

Sec. 3. Be it further resolved, That the President of Texas is hereby requested immediately to furnish the Government of the United States, through their accredited Minister near this Government, with a

copy of this Joint Resolution; also to furnish the Convention to assemble at Austin, on the fourth of July next, a copy of the same—And the same shall take effect from and after its passage.

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4. Ordinance of the Convention of Texas.

Ordinance of the Convention of Texas, July 4, 1845. 9 Laws of the Republic of Texas, Extra Sess. 4.

Whereas the Congress of the United States of America has passed resolutions providing for the annexation of Texas to that Union, which resolutions were approved by the President of the United States on the first day of March one thousand eight hundred and forty-five; and whereas the President of the United States has submitted to Texas the first and second sections of the said resolution, as the basis upon which Texas may be admitted as one of the State of the said Union; and whereas the existing government of the Republic of Texas has assented to the proposals thus made, the terms and conditions of which are as follows,

> [Quoted here was all of the Joint Resolution of the Congress of the United States of March 1, 1845, except paragraph 3.]

Now, in order to manifest the assent of the people of this Republic as required in the above recited portions of the said resolutions; We the deputies of the

people of Texas in convention assembled in their name and by their authority, do ordain and declare, that we assent to, and accept the proposals, conditions and guarantees contained in the first and second sections of the resolutions of the Congress of the United State aforesaid.

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5. Joint Resolution for the Admission of the State of Texas into the Union.

Joint Resolution of the Congress of the United States, December 29, 1845, 29th Congress, 1st Session, 9 Stat. 108.

Whereas, the Congress of the United States, by a joint resolution approved March the first, eighteen hundred and forty-five, did consent that the territory properly included within, and rightfully belonging to, the Republic of Texas, might be erected into a new state, to be called *The State of Texas*, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same might be admitted as one of the states of the Union; which consent of Congress was given upon certain conditions specified in the first and second sections of said joint resolution; and whereas, the people of the said Republic of Texas, by deputies in convention assembled, with the consent of the existing government, did adopt a constitution and erect a new State with a republican form of government, and in the

name of the people of Texas, and by their authority, did ordain and declare that they assented to and accepted the proposals, conditions, and guaranties contained in said first and second sections of said resolution: and whereas the said constitution, with the proper evidence of its adoption by the people of the Republic of Texas, has been transmitted to the President of the United States and laid before Congress, in conformity to the provisions of said Joint Resolution:

Therefore—

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Texas shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.

Sec. 2. *And be it further resolved*, That until the representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the State of Texas shall be entitled to choose two representatives.

6. Treaty of Guadalupe Hidalgo (Mexico), February 2, 1848, 9 Stat. 922, 926.

ARTICLE V.

The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio

Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination: thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

The southern and western limits of New Mexico, mentioned in this article, are those laid down in the map entitled *"Map of the United Mexican States, as organized and defined by various acts of the Congress of said republic, and constructed according to the best Authorities. Revised edition. Published at New York, in 1847, by J. Disturnell."* Of which map a copy is added to this treaty, bearing the signatures and seals of the undersigned plenipotentiaries. And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the

Pacific Ocean distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing-master of the Spanish fleet, and published at Madrid in the year 1802, in the atlas to the voyage of the schooners *Sutil* and *Mexicana*, of which plan a copy is hereunto added, signed and sealed by the respective plenipotentiaries.

In order to designate the boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both republics, as described in the present article, the two Governments shall each appoint a commissioner and a surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result agreed upon by them shall be deemed a part of this treaty, and shall have the same force as if it were inserted therein. The two Governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

The boundary line established by this article shall be religiously respected by each of the two Republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the general governments of each, in conformity with its own constitution.

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Appendix B

EXCERPTS FROM COMMITTEE HEARINGS, REPORTS AND DEBATES OF THE HOUSE AND SENATE SHOWING CONGRESSIONAL INTENT TO GRANT TEXAS RIGHTS UNDER THE ACT TO ITS HISTORIC THREE-LEAGUE BOUNDARY.

SENATE COMMITTEE HEARINGS

Hearings before the Committee on Interior and Insular affairs United States Senate 83rd Congress, 1st Sess., page 34.	Senator Holland (Author)	"This measure does not deal with any of the problems of that vast portion of the Continental Shelf . . . but it applies instead to only three miles in area lying off all states but two, and in the case of Texas applies to **three-leagues, or nearly ten and one-half miles,** and in the case of Florida . . ."
" page 35	Exhibit (Holland)	"EXHIBIT 3. Approximate areas of submerged lands within State boundaries. Expressed in acres." (The explanatory footnote to the table states:) "In figuring the marginal sea area, **only original State boundaries have been used.** These coincide with the 3-mile limit for all States except Texas, Louisiana, and Florida Gulf coast. In the latter cases, **the 3-league limit** as established before or at the time of entry into the Union has been used." (See 99 Cong. Rec. 2755 for correction as to Louisiana).
" page 50	Senator Holland	". . . We have used the term 3 geographic miles, and I would like the record to show that that is 3.45 land miles, which would apply in every place to all states except as to the 2 states, 1 of which, Texas, has a **3-league** limitation . . ."
" page 208	Senator Daniel (Co-Author and Committee Member)	"It has been sustained for over 100 years by the State of Texas, recognized by the United States, that our boundary goes out **3 leagues.** The Supreme Court did not deny it the other day in this Texas case."

*All excerpts are direct quotations from the hearings, reports, and debates unless otherwise noted by parenthesis. Emphasis supplied throughout.

" page 217	Senator Daniel	"The 3 league gulfward boundary of Texas was recognized by the United States and Mexico in the Treaty of Guadalupe Hidalgo, July 4, 1848, which significantly provides... The boundary lying between the two republics shall commence in the Gulf of Mexico, three-leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte... (9 Stat. 922)."
" page 218	Senator Daniel	"It is significant, though, at the time of this draft of the Treaty of Guadalupe-Hidalgo, the Texas Legislature passed the following Resolution.... in 1848: That our Senators be further instructed to oppose any Treaty with Mexico which may provide for lessening the boundaries of Texas as established by an Act to define the boundaries—And it gives the date of 1836 that I have just read to you."
" page 219	Senator Daniel	"Such limits of the State of Texas were further confirmed in the Gadsden Treaty using the point 3 leagues from shore in the Gulf of Mexico. Still later, in 1911, they were actually surveyed."
" page 315-317	Dialogue between Senator Kuchel (Committee member) and a witness, Mr. John J. Real, Manager and Attorney for the Fisherman's Cooperative Association	SENATOR KUCHEL. Why do you propose to eliminate the language, at the time such state became a member of the Union? Would you by striking that language evince an intention to restore to the states less than they had at the time they became members of the Union? MR. REAL. No, Senator. If the Congress feels that they should be restored to what they declared were their boundaries at the time of entrance into the Union or prior to that time, as in the case of Texas, then that could be done in a different way... The Holland Bill would return to them the resources and the waters for three leagues. SENATOR KUCHEL. Or, would you not agree, more accurately, what was Texas' at the time Texas entered the Union? MR. REAL. That is putting the same thing a little different way. What we want to avoid is the variance of United States three mile policy... So I say, why not handle it this way? If the intent is to give Texas the resources, in the nine miles of waters, you could give or quitclaim to them absolute jurisdiction within three nautical miles and keep it within present United States

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		policy and then specifically quit-claim to them even in this legislation an additional six miles of subsea resources . . . . SENATOR KUCHEL. But how can your argument be advanced by eliminating such language as "at the time such state became a member of the Union"? . . . MR. REAL. Because in effect it indicates that as far as the United States is concerned, the boundaries of Texas are three leagues off Texas. SENATOR KUCHEL. Or, rather, that we give back in this Bill to the states of the American Union only that which they had legally at the time they entered the Union. Is that a fair statement on my part? MR. REAL. Yes; that is right . . . "
" page 406	Dialogue between Senator Watkins (Committee member) and Senator Hill (opponent)	"SENATOR WATKINS. To be specific, let us take the case of the State of Texas. I understand that is **three-leagues.** SENATOR HILL. That is **ten and one-half miles**, as I understand it."
" page 526	Dialogue between the witness, Secretary of the Interior Douglas McKay, and Senator Daniel	"SENATOR DANIEL. May he complete that statement. I thought maybe he would say something about his understanding of the Texas 3-league boundary. SECRETARY McKAY. That is what I wanted to say. I am with Texas on that, **3-leagues** to sea."
" page 529	Secretary McKay	"I mean the 3-mile limit as far as my State (Oregon) is concerned. I mean **3-leagues**, as far as yours, sir, that is Texas and Florida."
" page 567	A witness: Mr. H. G. Barton, Chief, Oil and Gas Leasing Branch, Conservation Division, United States Geological Survey, Department of the Interior.	"Table 1 shows the current daily production and cumulative production for all productive submerged-land fields in the Gulf of Mexico. All data are segregated to show production landward and seaward of the **traditional State boundaries**, which, for the purpose of this report, are assumed to be 3 nautical miles seaward of mean low tide and the seaward limits of inland waters for Louisiana and California and **3 leagues** (9 nautical miles) seaward for Texas."
" page 931	A witness: Herbert Brownell Jr., Attorney General	"Our thought generally, Senator, without going into great detail, is that this line would be 3 miles out, except in the case of Texas and the west coast of Florida." (Referring to a map line to be drawn in accordance with the terms of the pending bill).

" page 957	Dialogue between Senator Holland and the witness, Attorney General Brownell.	"ATTORNEY GENERAL BROWNELL. In order that there may be no misunderstanding, generally speaking what we have in mind is the 3-mile line, except for the coasts of Texas and the west coast of Florida, where 3 leagues would generally prevail. SENATOR HOLLAND. The reason you make those two exceptions is because it is your understanding that the constitutions of Texas and Florida provide that the 3-league off-shore limit is the limit clear across Texas and along the west coast of Florida in the Gulf of Mexico? ATTORNEY GENERAL BROWNELL. That, plus the action of the Congress in relation to it. SENATOR HOLLAND. That, plus the action of Congress approving those two constitutions? ATTORNEY GENERAL BROWNELL. Yes."
" page 1057	Dialogue between Senator Holland and a witness, Mr. Jack B. Tate, Deputy Legal Adviser, Department of State.	"MR. TATE. What happened in Guadalupe Hidalgo was that the boundary was set at, I believe, 9 miles as I recall it. SENATOR DANIEL. Three leagues, which is 9 nautical miles or 10½ statutory miles?"
" page 1077	Dialogue between Senator Daniel and the witness, Mr. Jack B. Tate, representing the Department of State.	"SENATOR DANIEL. Then we do have the United States by treaty recognizing a boundary between Mexico and the United States as being the same boundary that Texas claimed as an independent nation 3 leagues out in the Gulf, is that not correct? MR. TATE. At that point; yes. SENATOR DANIEL. That is correct is it not? MR. TATE. That is right."
" page 1078	"	"SENATOR DANIEL . . . I just want to ask you again, it is not your contention that by coming into the United States our Nation went back on its word on Texas' boundary and let these riches outside of the 3 miles go back into the ownership of the family of nations, is it? MR. TATE. I am not making any contention on that score, Senator. SENATOR DANIEL. As to the State of Florida, its constitution, after the Civil War, provided that on the Gulf coast side, that is the shallowwater side, its boundary should go out 3 leagues from shore, and that was ap-

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		proved by the United States Congress. You are familiar with that, are you not? MR. TATE. I understand that to be true; yes. SENATOR DANIEL. So there at least are two instances in which our Nation by official action has recognized boundaries in the Gulf of Mexico a greater distance than 3 miles from shore; is that not correct, sir? MR. TATE. I think so; yes."
" page 1232-1233	Memorandum by Stewart French, Committee Counsel, on "historic State seaward boundaries."	"For convenient reference, I submit the following table of provisions with respect to sea boundaries in the enabling acts under which the coastal States . . . entered the Union . . ." "**Texas**—The Republic of Texas was proclaimed March 2, 1836, and on December 19, 1836, the Teaxs Congress passed an act defining the boundaries of the Republic (1 Laws, Republic of Texas). The southern boundary was described as follows: "beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico **three leagues** from land to the mouth of the Rio Grande." In the Annexation Resoultion of 1845, the 28th Congress declared it "doth consent that the Territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State * * *" (9 Stat. 926). The Treaty Guadalupe Hidalgo (9 Stat. 922), February 2, 1848, provides in Article V: "The boundary line between the two Republics (**id est**, the United States and Mexico) shall commence in the Gulf of Mexico, **three leagues** from land, opposite the Rio Grande * * *"
Hearings in Executive Sessions Before the Committee on Interior and Insular Affairs, United States Senate, 83rd Cong., 1st Sess. page 1285	Dialogue between Senators Anderson and Cordon (Acting Chairman and Co-Author)	"SENATOR ANDERSON. In the next place, all have recommended that no title shall be given whatever beyond the **historic** boundaries—out in the Continental Shelf. SENATOR CORDON. This bill carries out that philosophy exactly. SENATOR ANDERSON. And the Secretary of State has some questions about the 3-mile line. I think if the Holland bill were to be passed, it seems to me desirable that the language should be so drawn that we would stay to a 3-mile line, and then make sure that it stated 100 percent of all minerals are granted out to **9 marine miles**, if you are going to recognize that boundary for

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		Texas and Florida. Does this do anything along that line, or what is it?"
" page 1296	Senator Cordon	"The Congress is not in a position and does not have the authority to redesign the boundaries of any State without that State's consent."
" page 1318	Senator Cordon	"It provides that nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary **beyond 3 geographical miles if it were so provided by its constitution or laws prior to or at the time such State became a member of the Union,** or if it has been heretofore or is hereafter approved by Congress. **That is the language that reaches Florida and Texas."**
" page 1348	Senator Anderson	"I would like to include the Atlantic and Pacific, because I want to add a limiting phase on there that in no event shall the boundary of the State exceed 3 miles on the Atlantic or the Pacific coast, nor more than **3 leagues** in the Gulf of Mexico. I do not mean by that to restrict these States unduly, but I do not believe anyone has contended that the boundary of any State under the language of this bill would exceed 3 leagues. I do not say it shall apply only to Texas and Florida. I think that may be the only place it now applies. But Mississippi and Alabama may have some different feelings. I think that the Gulf of Mexico is somewhat different than the open sea off the Atlantic and Pacific coasts. Therefore, I wanted to put in that limitation there."
" page 1350	Senator Daniel	"I will say that as far as my interpretation as to Texas goes, our **original boundaries,** when we came into the Union, do not go beyond **3 leagues,** for sure, and nothing in this act will cover anything beyond **3 leagues."**
" page 1357	Senator Long	"...the historic boundary was the boundary at the time they came into the Union."
" page 1374	Senator Cordon	"In other words, it is expected to be shown in the report that this bill has two approaches to a determination of the area of its application. The first approach is that **of the boundaries of the States when they came into the Union; second,** an election to any State that has not done so to extend its boundary 3 geographical miles from its

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		present coastline, as the term is described in the present tense in the bill. The chairman reiterated that so it would be perfectly clear that that is the philosophy of the bill and its legal effect."
" page 1403	Senator Anderson	"I think if we are going to take the minerals lying 3 miles out into the open ocean or lying **ten and a half miles** out into the open ocean and say that the right to all those minerals shall belong to the States that lie along the ocean, it is pretty hard to say that the minerals underlying lands of my State of New Mexico or the minerals underlying the States of Nevada, Wyoming, or Colorado, should not belong to the people of those States . . . ."
" page 1414	Senator Cordon	"I am going to call through now on the Anderson amendment . . . This just says in no event shall the seaward boundaries of any State extend more than 3 miles into the Atlantic Ocean or the Pacific Ocean or more than **3 marine leagues** into the Gulf of Mexico."
" page 1415	Senator Anderson	"My only point was that there was a great deal said about how the Holland bill provided boundaries of **10½ miles** in the case of Texas and the west coast of Florida, but that it provided 3 miles in other instances, and I questioned that at the time. That was the statement of the sponsor of this bill. If that is correct, then this does not do violence to the bill."
" page 1415	Senator Cordon	"The boundary line of a State, this Congress cannot change. It can change the limits of the area that this bill acts upon, but not the boundaries of a State."

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REFERENCES TO THREE LEAGUES—HOUSE COMMITTEE REPORTS

Senate Report No. 133 from the Committee on Interior and Insular Affairs, to accompany S. J. Res. 13, page 10.	Sectional Analysis of the Joint Resolution.	"... Section 3 (a) (1) provides that the rights of ownership of lands and natural resources beneath navigable waters within the historic boundaries of the respective States are vested in and assigned to the States..."
" Appendix E page 65	Report of Senate Judiciary Committee, 80th Congress, on S. 1988, the quitclaim bill which is identical in substance with Senate Joint Resolution 13. (Incorporated in full in the 1953 report).	"Texas' boundary was fixed 3 marine leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by the annexation agreement."
Appendix F page 76	Table "Approximate area of Submerged Lands within State Boundaries" (Expressed in Acres).	TEXAS—MARGINAL SEA—2,460,560 acres. (Footnote explains this is based on "the 3-league limit as established before or at the time of entry into the Union...")
Senate Report No. 133, Part 2, Minority Views Appendix D, page 76	Table of "Historic" claims of Other States	"Partial listing of 'historic' State claims to expanses of the seas taken from colonial charters, constitutions, and statutes—Texas—1836—'running west along the Gulf of Mexico 3 leagues from land' (Act of Legislature of Republic) (1 Gammel's Laws of Texas 1066)... Texas—1848—'The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande...' (Treaty of Guadalupe Hidalgo) (1 Thorpe 377)..."
" Appendix F, page 122	Minority Report	"Texas, when it came into the Union, claimed a boundary of three leagues, or 10½ land miles. The Walter bill, substituting 'ownership' for 'boundary,' would give Texas a submerged area three times farther out to sea than its neighboring State of Louisiana."
" page 127	"	"The Walter bill would extend the inland water rule to the bed of the ocean. And the use of the phrase, 'original boundaries' already discussed in this letter, would result in inequalities among the States, since Texas asserts that it came into the Union with a 10½-mile seaward boundary."

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Hearings before Sub-committee No. 1, Committee on the Judiciary House of Representatives, 83rd Congress, 1st Sess. on H. R. 2948 and Similar Bills, page 181.	A witness: Mr. Douglas McKay, Secretary of the Interior	"Yes, sir, of the historic boundaries. In most cases of these States, it is 3 miles to sea, except in **Texas** and Florida, where it is, of course, **3 leagues.**"
" page 188	Congressman Wilson	"I was speaking particularly with regard to outside the State boundaries of **10½ miles** of Texas and Florida, and 3 miles for the rest of the States. **Historical boundaries** are what we are talking about."
" page 195	Dialogue between Congresswoman Thompson and the witness, Secretary McKay.	"MISS THOMPSON. I take it when you speak of **historical boundaries**, you mean **10 miles or 10½ miles?** SECRETARY McKAY. I mean whatever the State had when it came into the Nation. Most of the States are 3 miles. **Texas is 3 leagues**, I believe. Florida is 3 leagues."
" page 196	Mr. McKay	"The **historic boundaries** have been recognized by the States, in the case of my State for 94 years, when we came into the Union with the description that we came in with. With Texas, they came in by a treaty as a Republic. Those are **historic boundaries.** I do not think there is any question about that."
" page 195	Congressman Wilson	"That language refers back to the 3-mile limit of the States, and the **10½-mile limit** of Texas and Florida; . . ."
" page 272	A witness, Henry D. Larcade, Jr., former Representative from Louisiana.	"Texas had defined her limits of **3 leagues** in the Gulf of Mexico—at that time the doctrine of the cases of **Harcourt v. Galliard** and **R. I. v. Massachusetts**, that the external boundaries of the United States are the external boundaries of the States was not disputed."

" page 373	Congressman Wilson	"Also, the statement of the Attorney General that a map should be drawn showing the historical boundary line, which in the case of Texas would be **3 leagues or 10½ miles,** in the case of every other coastal State of the Union it would be 3 miles from the low-watermark, execpt Florida on its west coast would be 3 leagues or 10½ miles. I think if this method of approach is taken seriously by the committee that it would require hundreds of map drawers years to complete the gigantic job of ferreting out every little inlet form the top of Maine down the east coast to the bottom of Florida and around the Gulf coast to the mouth of the Rio Grande River..."

House Report No. 215 from the Committee on the Judiciary, House of Representatives, to accompany H. R. 4198, 83rd Cong., 1st Sess. page 4.	Analysis of the Bill, Title I, Definitions	"... Where the State boundary at the time it entered the Union or has been or shall be approved by Congress extends beyond the 3 geographical miles such area is included under the phrase "lands beneath navigable waters," ... The term 'boundaries' includes the **historic** seaward boundaries of the States in the Atlantic Ocean, the Pacific Ocean, the Gulf of Mexico, or any of the Great Lakes, **as they were** upon entrance of the State into the Union ..."
" page 43	Appendix, Report No. 1778, 80th Cong., 2nd Sess.	"Texas' boundary was fixed **3 marine leagues** into the Gulf of Mexico **at the time it was admitted** to the Union in 1845 by the annexation agreement."
" page 114	Minority Report (on H. R. 4198)	"In the case of California, all of that land lying between the low-water mark and the 3-mile limit is yielded. Other States have been granted all that territory lying within their so-called historical boundaries, which in the case of Texas is **10½ miles, ...**"
" page 57	Table "Approximate Area of Submerged Lands within State Boundaries." (Expressed in Acres).	TEXAS—MARGINAL SEA—2,466,560. (Footnote explains this acreage is based on "the 3-league limit as established **before or at the time** of entry into the Union ...")

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Debates in the United States Senate and House of Representatives on the Submerged Lands Act, 83rd Cong., 1st Sess. 99 Cong. Rec. 2347.	Congressman Hosmer	"The seaward boundaries of coastal States were fixed at the 3-mile limit, except in the case of Texas and the west coast of Florida, where the seaward boundary was **3 marine leagues or about 10½ miles.**"
" page 2515	Congressman Smith	"I agree that the States are entitled to their **historic boundaries,** extending out 3 miles, and I agree that the State of Texas by reason of the treaty under which it entered the Union is entitled to its **3 leagues.**"
" page 2527	Congressman Yates	"But those who favor this bill propose to give a new meaning to the term 'tidelands.' They say these are the lands lying seaward from shore for a distance of 3 miles—in the case of Texas and west Florida, **3 leagues.**"
" page 2565	Congressman Fisher	"Mr. Chairman, I wish now to address myself briefly to the Texas case. Ours is a little different, from that of other States, because we came into the Union under different terms and conditions, and our **historic** boundaries extend **10½ miles** seaward."
" page 2574	Congressman Brooks	"Mr Chairman, this bill seeks to establish the boundaries of the States as being the **historic** boundaries; that is, those boundaries which were created by historic documents, by treaties, **by laws,** by State constitutions **originally enacted,** and approved by the Congress.
" page 2576	Congressman Rogers	"It will be noted that this bill relates to offshore lands beyond the 3-mile limit in only two cases, to wit: The west coast of Florida and the coast of Texas, both of which States have under their constitution boundaries extending **3 leagues** into the Gulf of Mexico."
" page 2580	Congressman Crosser	"This bill, H. R. 4198, proposes to yield to the State of California all submerged lands lying between the low-water mark and the 3-mile limit offshore. Other States are yielded all submerged lands lying within their so-called historical boundaries. In the case of Texas, it is a belt of land extending 10½ miles from the low-water mark."

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" page 2620	Colloquy between Senators Douglas and Cordon.	"SENATOR DOUGLAS . . . I should like to ask specifically, what is the understanding of the distinguished Senator from Oregon as to what this provision does to the boundary of Texas? What does it mean in the case of Texas? "MR. CORDON. The Senator from Oregon is not going to attempt to bound the State of Texas on the floor of the Senate. The boundary of the State of Texas when she voluntarily pulled down her own flag and ran up the flag of the United States. That boundary has not changed."
" page 2620	Senator Daniel	"It may be that the Senator from Illinois wishes to make certain that the State of Texas does not claim that its boundary at the time of its admission to the Union extended beyond 3 leagues. I may say that the boundary of the State of Texas **at the time it entered the Union existed 3 leagues from** shore, which is equal to **9 marine miles, or 10½ statute miles.** "That boundary was fixed by the Republic of Texas in 1836. It was made known on the floor of the Senate before the United States recognized the independence of Texas, and was again explained to the Senate at the time Texas was admitted to the Union. "So 3 leagues from shore is the boundary Texas has always had since 1836. That was the boundary claimed by Texas at the time Texas entered the Union, and it is the boundary which Texas insists applies in the consideration of the question pending before the Senate today."
" page 2695	Senator Aiken	"Then the passage of the resolution would, to all intents and purposes, so far as I am concerned, leave the boundaries of the State fixed at the **3-league** limit from the shore."
" page 2695	Dialogue between Senators Douglas and Daniel.	"MR. DOUGLAS. Does the Senator from Texas believe that the resolution affirmatively gives to Texas the right to claim title and ownership out to **3 leagues** or **10½ miles?** MR. DANIEL. The Senator from Texas very definitely believes that the resolution gives the State of Texas the ownership and title out to the boundaries of the State of Texas as they existed at the time the Republic of Texas came into the Union as a State, which boundaries were, of

		course, **3 leagues**, and were so recognized then and have thereafter been recognized by the United States Government."
" page 2703	Dialogue between Senators Douglas and Holland.	"MR. DOUGLAS. What is the understanding of the Senator from Florida of the definition of **traditional** State boundaries in this table in the case of Texas? Does he understand it to be 3 miles or 10½ miles? "MR. HOLLAND. In the case of Texas, the **traditional** boundaries are **3 leagues** from the coast."
" page 2816	Senator Daniel	"On the gulf coast it will be noted that the boundaries of Florida and Texas are **3 leagues** from shore, while the boundaries of the other Gulf Coast States extend out 3 miles from shore."
" page 2831	Dialogue between Senators Daniel and Hill.	"MR. DANIEL. But let me say to the Senator from Alabama I hope the Senator does not mean to imply that the pending joint resolution covers any land beyond the 3-league boundary, so far as Texas is concerned. It certainly does not. "MR. HILL. I appreciate that fact. "MR. DANIEL. This measure is limited to lands within the boundaries of the State of Texas as they existed at the time Texas entered the Union, which, very clearly, from the records of the United States State Department itself, was **3 leagues from shore.**"
" page 2891	Senator Douglas (opponent)	"Attention was called to the fact that in a statute passed by the Republic of Texas in 1836, it was specifically asserted that Texas was to have control over the waters off the coast for a distance of **3 leagues or 10½ land miles.** About the fact of that statute there can be no question."
" page 2916	Senator Douglas	"The pending joint resolution seems clearly intended by its chief proponents to transfer at once ownership and control of the submerged lands beyond the 3-mile limit out to **3 leagues or 10½ miles** from shore, in the cases of, first, Texas, on the ground that its statute of 1836 gave it such a boundary at the time such State became a member of the Union . . ."
" page 2976	Senator Daniel	"The joint resolution does not undertake to fix the historic boundaries of any State, but it limits them all to the boundaries as they existed at the time each State en-

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		tered the Union. There is no dispute that Texas' gulfward boundary at that time was 3 leagues—10½ miles from shore. At the request of certain officials of the States, section 4 permits extension of the boundaries out to 3 miles in case the States have not already done that, but as to the State of Texas, the Holland joint resolution limits us by its terms. It quitclaims to Texas only such lands as were within our seaward boundaries at the time Texas entered the Union, and there is no evidence anywhere in the record that that was anything different from **3 leagues, or 10½ miles from shore.**"
" page 3005	Senator Anderson (opponent)	"... but it needs to be remembered that when it comes to the Continental Shelf—and this statement deals only with areas beyond the **historic boundaries** of the States which we have assumed in the resolution to be somewhere in the neighborhood of **10½ miles** in the case of Texas and the west shore of Florida, and at least 3 miles in other instances—"
" page 3036	Dialogue between Senators Daniel and Anderson.	"MR. DANIEL. Will the Senator concede that, not as of recent date, but in 1836, the Republic of Texas fixed its seaward boundaries **3 leagues** into the Gulf of Mexico? "MR. ANDERSON. Yes I will."
" page 3052	Senator Anderson	"I have previously said that I though the boundary section is an openend commitment, and I suggest that it should be limited to 3 miles on the Atlantic and Pacific coasts and to **3 leagues** in the Gulf of Mexico. The Senator from Texas indicated he would support that view... I think the statements of the Senators from Florida and Texas who have been identified with the two bills now under consideration are sufficiently strong as to constitute legislative history, and therefore will hereafter make it very difficult for anyone to make any claim to the contrary."
" page 3270	Senator Hill (opponent)	"As I said, with regard to Texas, it will be recalled that Texas was an independent Republic for approximately 9 years prior to its admission into the Union through the process of annexation. By the act of December 19, 1836, the Congress of the Republic of Texas defined the seaward boundary of Texas as being located '3 leagues from land...'"

" page 3290	Senator Kefauver	"The joint resolution before us confirms the seaward boundaries of coastal States to the usual 3-mile limit, but it confirms limits of a greater distance for such States as claimed such greater distances when they entered the Federal union."
" page 3359	Senator Kefauver	"In fairness, let me say that I think the State of Texas had a little better claim than did some of the other States."
" page 3532	Letter to the President from Senators opposing S. J. 13, put into the Record during the debates by Senator Humphrey	"We are being told by Senate supporters of Senate Joint Resolution 13 that this bill sets up State sovereignty within a 3-mile belt for every coastal State, except Florida and Texas, where the belt will be **10½ miles**. But, in fact, Senate Joint Resolution 13 does not say that. It is far less definite. But even if Senate Joint Resolution 13 were specific on this matter, the extension of the boundaries of Florida and Texas to **10½ miles** beyond the low-water mark would violate the boundaries of the United States, and cause complications with other nations . . ."
" page 3551	Dialogue between Senators Humphrey and Holland	"MR. HUMPHREY. . . . I continue to read from the joint resolution: Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond 3 geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress. "What does that mean? "MR. HOLLAND. Mr. President, will the Senator yield at that point? "MR. HUMPHREY. I will yield to the Senator from Florida. "MR. HOLLAND. With reference to the first part of the statement, does not the Senator from Minnesota realize that it means, in the case of any State that was brought into the Union, whose constitution or laws stated before that time that its boundary was more than 3 miles out—which is true of only one State, namely the State of Texas which had a 3-league boundary—that such a State would not be prejudiced by the provisions of the joint

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" page 3617	Senator Humphrey	"The Senator from Texas (Mr. Daniel) has stressed his point that Texas, by reason of its history, by reason of its background, has a 3-league belt of 10½ miles off its coast into the Gulf of Mexico."
" page 3681	Senator Magnuson	"Senate Joint Resolution 13 would extend our territorial waters to 10½ miles off the coasts of Texas and western Florida."
" page 3826	Senator Morse	"There is small dispute over the fact that the major portion of proved and estimated subsea oil in the Gulf of Mexico lies beyond the 3-league limit which may be the boundary set by the resolution for Texas . . ."
" page 3865	Senator Taft (in part reading from a letter of President Eisenhower.)	"Mr. President, some days ago a number of Senators addressed a letter to President Eisenhower, asking for his position on the joint resolution . . . The letter was written yesterday, and reads as follows: '. . . The Supreme Court has declared in very recent years that there are certain paramount Federal rights in these areas. But the Court expressly recognized the right of Congress to deal with the matters of ownership and title. 'Twice by substantial majorities both Houses of Congress have voted to recognize the traditional concept of State ownership of these submerged areas. Twice these acts of Congress have been vetoed by the President. 'I would favor such acts of Congress. '. . . 'And so the State of Texas paid off the $10 million debt of the Republic. It kept its 200 million acres of lands, including the submerged area extending 3 marine leagues seaward into the Gulf of Mexico. 'My position is the same today. It was further amplified by the administration representatives in the hearings before the Senate and your committees considering the legislation. 'I favor the prompt passage by the Senate of Senate Joint Resolution 13 with any amendments the Senate may approve not inimical to the principles which I have expressed.'"
" page 3952	Senator Taft	"The Republican platform of 1952 clearly stated: 'We favor restoration to the States of their rights to all lands and resources beneath navigable inland and offshore waters within their historic boundaries.'

		"In the campaign General Eisenhower endorsed that plank, and stated even more clearly his belief that the States are entitled to the lands within their historic boundaries, and that in that connection the Texas historic boundaries amounted to 3 marine leagues, by reason of the annexation agreement in the case of Texas."
" page 4095	Senator Holland (referring to Sec. 4 of the joint resolution).	"There are two different provision, as the Senator can see from a reading of the sentence. So far as I know, the first one is applicable only to Texas, and that reads as follows: 'Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond 3 geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union.' "I have made a considerable study of this matter, and I do not know of any State which even claims to have had such a provision in its constitution or laws prior to its admission to the Union. Neither do I know of any of the after-admitted State who even had separate existence before they were admitted to the Union, as the State of Texas had, it having been an independent republic for some years prior to entering the Federal Union."
" page 4096-4097	Senator Kefauver	"So the important sections, in my opinion, are section 3 (a) and section 2 (a) (2), which, as I see it, goes out beyond the 3-mile limit when such boundary existed at the time the State became a member of the Union. It also provides for the boundary heretofore or hereafter approved by Congress. If the word "or" were used, so that the extension out to 3 leagues, or 11½ miles in the case of Texas and Florida, would have to be approved later by Congress, that would be a different situation. "However, as I see these two sections, reading them together, they must mean that under the vesting clause of section 3 the State would get its 3 leagues at this time, and such other instance as the Congress may hereafter vest in it."
" page 4159	Senator Holland	"But I am perfectly willing to meet the suggestions of my friends, some of whom have been opponents, and some of whom have been supporters of the joint resolution, to

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more clearly spelled out than it was in the original measure, to the effect that there is no intention whatsoever to grant boundaries beyond 3 geographical miles in either the Atlantic or the Pacific, and that this Congress knows of no possible situation under which greater boundaries are claimed or could be granted in the Gulf of Mexico than 3 leagues."

" page 4159	Senator Monroney (opponent)	"... in the case of the State of Texas and in the case of the west coast of Florida, those boundary lines would be extended 10½ miles into the open sea, and thus create new property rights in those two States."
" page 4159	Senator Monroney	"In the first place, it seems to me that by the creation of two separate sets of property rights—one in the case of California, Louisiana, Mississippi, Alabama, and the other coastal States, extending 3 miles into the sea; and the other in the case of specific exceptions made for one large State, namely, Texas, so as to permit its property rights to extend 10½ miles into the open sea, and in the case of Florida to permit its property rights to extend 10½ miles into the open sea on the western side of the State, and 3 miles into the open sea on the eastern side of the State—we shall be establishing a very peculiar and strange yardstick which I believe will latter embarrass us."
" page 4162	Senator Monroney	"I am trying to show the fallacy of such a position, and the dangerous political waters into which we must steam when we grant to Texas title to land extending 10½ miles; to Florida, on its west coast, 10½ miles; and to all the other coastal States, 3 miles."
" page 4175	Senator Daniel	"As the Senator from Florida said, the intention was to write specifically into the joint resolution what the authors have said all along would be its effect—that it covered **only land within the historic boundaries.** The only way I know of to describe the word 'historic' by means of definition is to say, 'as the boundaries existed when the respective States entered the Union, or as heretofore approved by the Congress.'"

" page 4202	Senator Taft	"This amendment is, in substance, in every way the same as the amendment offered the day before yesterday by the Senator from Illinois (MR. DOUGLAS). That amendment was rejected by a substantial vote . . . It would also limit the seaward boundary of Texas to 3 miles instead of 12 miles." (The Monroney amendment was defeated).
" page 4358	Senator Holland	"The truth is that Senate Joint Resolution 13 covers only the lands beneath navigable waters within the historic boundaries of the 48 States—lands which the States have possessed, used and developed for more than 100 years. As to the 21 coastal States, this measure does not extend to any property beyond their recognized seaward boundaries 3 miles from shore, except in the cases of Texas and the West Coast of Florida, where 9 marine miles—nearly 10½ miles—was long ago recognized by Congress as the seaward boundary in the Gulf of Mexico."
" page 4368	Senator Lehman (opponent)	"I suppose the rest of us should be grateful that the Senate has voted to close, at least temporarily, the completely open end of the Holland proposal and to fix the extent of the giveaway to those resources within 10½ miles of the Florida coastline, 3 miles of the Louisiana coastline, 3 miles of the California coastline, and 10½ miles of the Texas coastline."
" page 4370	Senator Lehman	"If Texas, Louisiana, California, and Florida are to be given title to the lands underneath the marginal seas—and, in the cases of Florida and Texas, 10 miles out into the open sea—if these States are to be given all title and rights and regulatory powers in these seas, in these land beds, where do we stop."
" page 4473	Senator Magnuson (Opponent, offering amendments to limit all states to 3 miles. The amendment was defeated).	"In effect, the two amendments limit the so-called Holland joint resolution to the 3-mile limit. In other words, they invalidate the portion of the joint resolution which would allow Texas and Florida to go beyond the historic 3-mile limit."
" page 4474	Senator Magnuson	"On Thursday, April 23, I dwelt at some length on the grave implications involved in extending seaward bound-

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page 4477	Senator Daniel	Of course, the [illegible] of the State of Texas extends 3 leagues, or 10½ miles; and the boundary of the State of Florida, on its west coast along the Gulf of Mexico, extends 10½ miles."
" page 4477	Senator Daniel	"If Senators will turn to page 411 of the printed hearings before the Senate Interior and Insular Affairs Committee on Senate Joint Resolution 13, the green volume on each desk, they will find opposite that page a State Department map showing the survey of this boundary in the Gulf of Mexico. Does that survey show that the boundary of Texas was 3 miles from shore? No, Mr. President; the survey shows that the boundary of Texas is **3 leagues** from shore. My colleagues will find that this map refers to that boundary, which is the present boundary in the gulf between the United States and Mexico, as shown by a red line running into the gulf. On that red line are the following words: **'International boundary begins 3 leagues from land.'** "That map is a State Department map of the actual survey made in 1911. Mr. President, the Senate of the United States has approved the **3-league boundary of Texas** and the 3-league boundary between the Republic of Mexico and the United States in the Gulf of Mexico. That was done when the Senate approved the Treaty of Guadalupe-Hidalgo in 1848 and the Gadsden Purchase Treaty in 1853, and again in connection with a dispute between the United States and Texas over the north-western limits of the State of Texas, after New Mexico had been ceded by Mexico to the United States. The Texas Boundary Act of 1836 was recognized and followed."
" page 4479	Senator Watkins (Committee Member)	"In the case of Texas and the gulf coast of Florida, **the traditional boundary extended 10½ miles seaward."**
" page 4889	Congressman Jonas of Illinois	"I think our activities in connection with legislating on this important measure should be confined exclusively to that which we originally started out to accomplish, to wit, to establish the boundaries of the States over which we have this existing controversy which, I understand includes the 3-mile limit and **a 10½-mile limit for the States of Texas and Florida."**

" page 4897	Colloquy between Congressmen Reed of Illinois and Smith of Virginia	"MR. REED OF ILLINOIS. It means there is nothing in this act, that is, the bill that is now before us, that shall be deemed to affect in any wise the rights, if we have any, of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath of navigable waters, as defined in section 2 hereof. "MR. SMITH OF VIRGINIA. That means outside of the 3-mile limit or the 9-mile limit? "MR. REED OF ILLINOIS. The 3-mile limit or the 3-league limit."

Appendix C

APPROPRIATIONS BY CONGRESS IMPLEMENTING THE TREATY OF GUADALUPE HIDALGO, THE GADSDEN TREATY AND THEIR SUCCESSOR CONVENTIONS AND TREATIES.

1849	30th Congress, 2nd Session, Chap. 71, 9 Stat. 348	An Act to provide for carrying into Execution, in Part, the Twelfth Article of the Treaty with Mexico, concluded at Guadupe (Guadalupe) Hidalgo.
1850	31st Congress, 1st Session, Chap. 73, 9 Stat. 473	An Act to provide for carrying into Execution, in further Part, the Twelfth Article of the Treaty with Mexico concluded at Guadalupe Hidalgo.
1850	31st Congress, 1st Session, Chap. 90, 9 Stat. 523, at p. 541	An Act making Appropriations . . . at p. 541: For expenses in running and marking the boundary line between the United States and Mexico, making the examinations contemplated by the sixth article of the Treaty of Guadalupe Hidalgo.
1851	31st Congress, 1st Session, Chap. 32, 9 Stat. 598, at p. 614	An Act making Appropriations . . . at p. 614: For expenses in running and marking the boundary line between the United States and Mexico, making the examinations contemplated by the sixth article of the Treaty of Guadalupe Hidalgo.
1852	32nd Congress, 1st Session, Chap. 8, 10 Stat. 2	An Act providing for carrying into Execution, in further Part, the twelfth Article of the Treaty with Mexico, concluded at Guadalupe Hidalgo.
1852	32nd Congress, 1st Session, Chap. 66, 10 Stat. 15, at p. 17	An Act to supply Deficiencies in the Appropriations . . . at p. 17: For running and marking the boundary line between the United States and Mexico, according to the Treaty of Guadalupe Hidalgo . . .
1855	33rd Congress, 2nd Session, Chap. 175, 10 Stat. 643, at p. 661	An Act making Appropriations . . . at p. 661: For running and marking the boundary line between the United States and the Republic of Mexico, under the treaty concluded at the city of Mexico on . . . (Dec. 30, 1853—the "Gadsden Treaty").
1885	48th Congress, 2nd Session, Chap. 360, 23 Stat, 478	An Act making Appropriations . . . at p. 478: International Boundary survey, United States and Mexico: To enable the President to execute the engagements of the convention of . . . (July 29, 1882).
1890	51st Congress, 1st Session, Chap. 1126, 26 Stat. 504	An Act making Appropriations . . . at p. 504: International Boundary Survey, United States and Mexico: To enable the President to execute the engagements of the convention of July (29, 1882) . . . and the convention of February (18, 1889) . . .

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1892	52nd Congress, 1st Session, Chap. 380, 27 Stat. 349	An Act making Appropriations . . . at p. 349: International Boundary Survey, United States and Mexico: To enable the President to execute the engagements of the convention of July (29, 1882) . . . and the convention of February (18, 1889) . . .
1894	53rd Congress, 2nd Session, Chap. 307, 28 Stat. 424	An Act making Appropriations . . . at p. 424: United States and Mexican Boundary Survey: That the disbursements made to the members of the Boundary Commission, under the convention of July (29, 1882) . . . and February (18, 1889) . . . shall be allowed.
1896	54th Congress, 1st Session, Chap. 33, 29 Stat. 17, at p. 18	An Act making appropriations . . . at p. 18: To enable the International Boundary Commission, appointed under the conventions of July (29, 1882) . . . and February (18, 1889) . . . to complete the survey and remarking of the boundary between the United States and Mexico.
1898	55th Congress, 2nd Session, Chap. 55, 30 Stat. 262, 266	An Act making appropriations . . . p. 266: To enable the International (water) Boundary Commission, United States and Mexico, to meet the share of the United States.
1899	55th Congress, 3rd Session, Chap. 128, 30 Stat. 823, 827	An Act making appropriations . . . at p. 827: International (water) Boundary Commission, United States and Mexico.
1900	56th Congress, 1st Session, Chap. 159, 31 Stat. 60, 64	An Act making appropriations . . . at p. 64: International (water) Boundary Commission, United States and Mexico.
1901	56th Congress, 2nd Session, Chap. 802, 31 Stat. 882, 887	An Act making appropriations . . . at p. 887: International (water) Boundary Commission, United States and Mexico.
1902	57th Congress, 1st Session, Chap. 272, 32 Stat. 76, 80	An Act making appropriations . . . at p. 80: International (water) Boundary Commission, United States and Mexico.
1903	57th Congress, 2nd Session, Chap. 530, 32 Stat. 807, 811	An Act making appropriations . . . at p. 811: International (water) Boundary Commission, United States and Mexico.
1904	58th Congress, 2nd Session, Chap. 543, 33 Stat. 67, 72	An Act making appropriations . . . at p. 72: International (water) Boundary Commission, United States and Mexico.
1905	58th Congress, 3rd Session, Chap. 1407, 33 Stat. 915, 919	An Act making appropriations . . . p. 919: International (water) Boundary Commission, United States and Mexico.
1906	59th Congress, 1st Session, Chap. 3337, 34 Stat. 286, 291	An Act making appropriations . . . at p. 291: International (water) Boundary Commission, United States and Mexico.

1907	59th Congress, 1st Session, Chaps. 912 and 1184; 34 State. 885; 916, 920	Acts making appropriations . . . at pp. 885 and 920: International (water) Boundary Commission, United States and Mexico.
1908	60th Congress, 1st Session, Chap. 183, 35 Stat. 171, 176	An Act making appropriations . . at p. 176: International (water) Boundary Commission, United States and Mexico.
1909	60th Congress, 2nd Session, Chap. 235, 35 Stat. 672, 677	An Act making appropriations . . . at p. 677: International (water) Boundary Commission, United States and Mexico.
1910	61st Congress, 2nd Session, Chap. 199, 36 Stat. 337, 342	An Act making appropriations . . . at p. 342: International (water) Boundary Commission, United States and Mexico.
1911	61st Congress, 3rd Session, Chap. 208, 36 Stat. 1027, 1032	An Act making appropriations . . . at p. 1032: International (water) Boundary Commission, United States and Mexico.
1912	62nd Congress, 2nd Session, Chap. 97, 37 Stat. 94, 99	An Act making appropriations . . . at p. 99: International (water) Boundary Commission, United States and Mexico.
1913	62nd Congress, 3rd Session, Chap. 86, 37 Stat. 688, 692	An Act making appropriations . . . at p. 692: International (water) Boundary Commission, United States and Mexico.
1914	63rd Congress, 2nd Session, Chap. 132, 38 Stat. 442, 446	An Act making appropriations . . . at p. 446: International Boundary Commission, United States and Mexico.
1915	63rd Congress, 3rd Session, Chap. 145, 38 Stat. 1116, 1120	An Act making appropriations . . . at p. 1120: International Boundary Commission, United States and Mexico.
1916	64th Congress, 1st Session, Chap. 208, 39 Stat. 252, 256	An Act making appropriations . . . at p. 256: International Boundary Commission, United States and Mexico.
1917	64th Congress, 2nd Session, Chap. 161, 39 Stat. 1047, 1051	An Act making appropriations . . . at p. 1051: International Boundary Commission, United States and Mexico.
1918	65th Congress, 2nd Session, Chap. 52, 40 Stat. 519, 523	An Act making appropriations . . . at p. 523: International Boundary Commission, United States and Mexico.
1919	65th Congress, 3rd Session, Chap. 123, 40 Stat. 1325, 1329	An Act making appropriations . . . at p. 1329: International Boundary Commission, United States and Mexico.

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1920	66th Congress, 2nd Session, Chap. 223, 41 Stat. 739, 743	An Act making appropriations . . . at p. 743: International Boundary Commission, United States and Mexico.
1921	66th Congress, 3rd Session, Chap. 113, 41 Stat. 1205, 1209	An Act making appropriations . . . at p. 1209: International Boundary Commission, United States and Mexico.
1924	68th Congress, 1st Session, Chap. 204, 43 Stat. 205, 211	An Act making appropriations . . . at p. 211: International Boundary Commission, United States and Mexico.
1925	68th Congress, 2nd Session, Chap. 364, 43 Stat. 1014, 1019	An Act making appropriations . . . at p. 1019: Mexican Boundary Commission.
1926	69th Congress, 1st Session, Chap. 195, 44 Stat. 330, 336	An Act making appropriations . . . at p. 336: Mexican Boundary Commission.
1927	69th Congress, 2nd Session, Chap. 189, 44 Stat. 1178, 1185	An Act making appropriations . . . at p. 1185: Mexican Boundary Commission.
1933	72nd Congress, 2nd Session, Chap. 144, 47 Stat. 1371, 1376	An Act making appropriations . . . at p. 1376: International Boundary Commission, United States and Mexico.
1934	73rd Congress, 2nd Session, Chap. 104, 48 Stat. 529, 534	An Act making appropriations . . . at p. 534: International Boundary Commission, United States and Mexico.
1935	74th Congress, 1st Session, Chap. 7, 49 Stat. 24	Joint Resolution to provide for defraying the expenses of the American section, International Boundary Commission, United States and Mexico.
1935	74th Congress, 1st Session, Chap. 39, 49 Stat. 67, 74	An Act making appropriations . . . at p. 74: International Boundary Commission, United States and Mexico.
1936	74th Congress, 2nd Session, Chap. 405, 49 Stat. 1309, 1317	An Act making appropriations . . . at p. 1317: International Boundary Commission, United States and Mexico.
1937	75th Congress, 1st Session, Chap. 359, 50 Stat. 261, at p. 268	An Act making appropriations . . . at p. 268: International Boundary Commission, United States and Mexico.
1938	75th Congress, 3rd Session, Chap. 180, 52 Stat. 248, at p. 255	An Act making appropriations . . . at p. 255: International Boundary Commission, United States and Mexico.

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1939	76th Congress, 1st Session, Chap. 248, 53 Stat. 885, at p. 893	An Act making appropriations . . . at p. 893: International Boundary Commission, United States and Mexico.
1940	76th Congress, 3rd Session, Chap. 189, 54 Stat. 181, at p. 189	An Act making appropriations . . . at p. 189: International Boundary Commission, United States and Mexico.
1941	77th Congress, 1st Session, Chap. 258, 55 Stat. 265, at p. 273	An Act making appropriations . . . at p. 273: International Boundary Commission, United States and Mexico.
1942	77th Congress, 2nd Session, Chap. 472, 56 Stat. 468, at p. 475	An Act making appropriations . . . at p. 475: International Boundary Commission, United States and Mexico.
1943	78th Congress, 1st Session, Chaps. 17, 182, 218; 57 Stat. 21, 30; 271, 278; 431, 447	Acts making appropriations . . . at pp. 30, 278, and 447: International Boundary Commission, United States and Mexico.
1944	78th Congress, 2nd Session, Chaps. 152, 294, 304, 660; 58 Stat. 150, 173; 395, 403; 597, 612; 853, 870	Acts making appropriations . . . at pp. 173, 403, 612, and 870: International Boundary Commission, United States and Mexico.
1945	79th Congress, 1st Session, Chaps. 129, 589; 59 Stat. 169, 176; 632, 653	Acts making appropriations . . . at pp. 176, 653: International Boundary Commission, United States and Mexico.
1946	79th Congress, 2nd Session, Chaps. 143, 541; 60 Stat. 103, 113; 446, 454-5	An Act making additional appropriations . . . at p. 113: International Boundary Commission, United States and Mexico; An Act making appropriations . . . at p. 454-5: International Boundary and Water Commission, United States and Mexico.
1947	80th Congress, 1st Session, Chap. 211, 61 Stat. 279, 284	An Act making appropriations . . . at p. 284: International Boundary and Water Commission, United States and Mexico.
1948	80th Congress, 2nd Session, Chap. 400, 62 Stat. 305, 310	An Act making appropriations . . . at p. 310: International Boundary and Water Commission, United States and Mexico.
1949	81st Congress, 1st Session, Chap. 354, 63 Stat. 447, 451	An Act making appropriations . . . at p. 451: International Boundary and Water Commission, United States and Mexico.
1950	81st Congress, 2nd Session, Chap. 896, 64 Stat. 595, 611	An Act making appropriations . . . at 611: International Boundary and Water Commission, United States and Mexico.

APPROPRIATIONS IMPLEMENTING TREATIES CONTINUED

1951	82nd Congress, 1st Session, Public Law 188, 65 Stat. 575, 578	An Act making appropriations . . . at p. 578: International Boundary and Water Commission, United States and Mexico.
1952	82nd Congress, 2nd Session, Public Law 495, 66 Stat. 549, 551	An Act making appropriations . . . at p. 551: International Boundary and Water Commission, United States and Mexico.
1953 (Mar. 28)	83rd Congress, 1st Session, Public Law 11, 67 Stat. 8, 11	An Act making supplemental appropriations . . . at p. 11: International Boundary and Water Commission, United States and Mexico.

Appendix D

EXCERPTS FROM NEWSPAPERS WIDELY CIRCULATED IN WASHINGTON SHOWING PUBLIC NOTICE AND KNOWLEDGE OF THE INTENT AND EFFECT OF THE SUBMERGED LANDS BILL TO GRANT PROPERTY RIGHTS THREE LEAGUES IN THE CASE OF TEXAS

NEW YORK TIMES March 2, 1953, p. 1	"Senator Hugh Butler of Nebraska, the Interior Committee Chairman, ... has predicted that his committee would report a bill giving the states title to seabottom running from three miles to three leagues (about ten miles) off shore. Only Texas and the west coast of Florida have the historic three-league boundary."
NEW YORK TIMES March 4, 1953, p. 1	"The position taken by the State Department was important because Texas and Florida claim boundaries along the Gulf of Mexico that extend ten and one-half miles, or three leagues, out from shore. The claims of both states are recognized in pending bills that seek to give the coastal states title to submerged lands ... within historic offshore boundaries."
WASHINGTON POST March 19, 1953, p. 8	"The measure, fulfilling one of President Eisenhower's campaign pledges, would make coastal states full owners of their offshore submerged lands out to the United States three-mile limit or to the states' historic boundaries—whichever is farther. "This would be about 10½ miles in the case of Texas and western Florida."
NEW YORK TIMES March 19, 1953, p. C-53	"The measure attempts to give the states the title they claim within historic boundaries running seaward from three miles in most cases to ten and one-half on the Gulf Coast of Florida and Texas, * * * The compromise makes no gesture toward meeting the objection of the State Department to recognizing boundaries farther at sea than the three miles claimed by the United States itself."
WASHINGTON DAILY NEWS March 19, 1953, p. 7	"This bill was approved yesterday by a judiciary subcommittee. It would grant coastal states clear title to the submerged lands out to their historic seaward boundary ... Historic boundaries extend three miles into the sea, except off Western Florida and Texas, where it is 10½ miles. * * *"
WASHINGTON POST March 25, 1953, p. 1	"Historic state boundaries extend three miles seaward except along the Gulf coasts of Texas and Florida, where the limit is 10½ miles."

NEW YORK TIMES March 27, 1953, p. 14	"The Senate Committee on Interior and Insular Affairs reported a bill late today giving the states full title to and developmental rights in submerged lands . . . within the offshore boundaries to which they lay claim. "These boundaries, with two exceptions, run three miles out to sea, Florida and Texas claim boundaries extending three leagues, or ten and one-half miles, into the Gulf of Mexico."
WASHINGTON EVENING STAR March 31, 1953, p. A-2	"The Senate begins debate tomorrow on its bill, but is not expected to reach a final vote until after Easter. The Senate version would vest in States the title to offshore submerged areas within their three-mile limit, or, in the case of Texas and Florida, within a ten-mile belt."
WASHINGTON POST April 1, 1953, p. 2	"In its present form, the House Bill establishes State title to . . . submerged lands within their historic seaward boundaries (three miles off their coasts), execpt in the case of Texas and Florida, where the limit is 10½ miles."
WASHINGTON POST April 2, 1953, p. 6	"The House Bill confirms Federal jurisdiction over the continental shelf beyond State boundaries—three miles seaward except off the coast of Texas and West Florida, where the limit is 10½ miles."
NEW YORK TIMES April 5, 1953, p. 2-E	"The bill would give the states title to the continental shelf within their 'historic boundaries' (10½ miles seaward in the case of Texas and Florida, 3 miles for all other coastal states)."
WASHINGTON POST April 12, 1953, p. 6-M	"Mr. Eisenhower said coastal states should have title to . . . lands out of their 'historical' seaward boundaries. This is three miles for most states and 10½ miles for Texas and Western Florida."
WASHINGTON POST April 15, 1953, p. 2	"The bills would give coastal states title to submerged lands, some containing rich oil deposits, out to their historic boundaries. This would be three miles into the sea off most states, and 10½ miles in the case of Texas and West Florida."
NEW YORK TIMES April 18, 1953, p. 22	"This would fix the seaward boundaries of Texas and West Florida at 10½ miles. The rest of the continental shelf, which runs out as far as 150 miles in places, would remain under federal control."
WASHINGTON POST April 25, 1953, p. 1	"The talk-bound bill would quitclaim . . . states lands beneath the so-called marginal sea. State boundaries would extend three miles seaward for this purpose, except in the case of Texas and the Gulf Coast of Florida, where the seaward limit would extend 10½ miles."

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NEW YORK TIMES April 25, 1953, p. 1	"The pending bill would give coastal states uncontested title to offshore lands 'within their historic boundaries'—three miles to sea for most but 10½ miles into the Gulf of Mexico for Texas and Florida. * * * "The President in his reply today, indicated that he favored the 10½ mile claims of Texas and Florida. He noted that Congress had twice voted to 'recognize the traditional concept of state ownership' of offshore lands—bills successfully vetoed by former President Truman—and commented: 'I would approve such acts of Congress.' "The vetoed bills both recognized 10½ miles as the boundaries of the two states."
WASHINGTON POST April 28, 1953, p. 1	"The pending bill grants the coastal states title to submerged lands within their historic boundaries—or three miles seaward except in the case of Texas and the Gulf Coast of Florida, where the seaward limit would be 10½ miles."
WASHINGTON POST April 29, 1953, p. 1	"The Continental Shelf Bill is designed to recognize Federal title to, and arrange for government administration of, submerged lands beyond historic state boundaries (three miles offshore except in the case of Texas and the Gulf Coast of Florida, where the seaward boundaries are 10½ miles)."
WASHINGTON POST April 29, 1953, p. 41	"Both Secretary of State Dulles and Attorney General Brownell were emphatic in congressional testimony that the three tidelands states must not have title to more than the historical boundaries—namely, three miles offshore, except in the case of Texas and Florida, which get 10½ miles."
NEW YORK TIMES April 29, 1953, p. 1 Dreu Pearson's Column	"Proceeding quickly under the new agreement today, the Senate took less than two hours to debate and vote down one of these amendments. It had been offered last night and provided for federal development of offshore oil and other natural wealth seaward of the usual three-mile limit. It thus would have disregarded claims of Florida and Texas that their borders extend 10½ miles to sea."
WASHINGTON EVENING STAR April 29, 1953, p. A-12	"The amendment would strike directly at Texas and Florida. The pending bill recognizes their claims to three leagues—10½ miles—in the Gulf of Mexico."
WASHINGTON POST May 1, 1953, p. 5	"Under the Tidelands Bill backed by the administration the historical boundaries of Texas and West Florida would be recognized at 10½ miles and all other states at three miles."

NEW YORK TIMES **May 1, 1953, p. 15**	"By a vote of 59 to 22, the Senate rejected an amendment to the offshore oil bill today to keep submerged lands and their resources, seaward of the three-mile limit, in the hands of the federal government . . . "Senator Francis Case, Republican of South Dakota, next sought to whip up floor support for an amendment providing for federal development of offshore oil and other resources beyond historic state boundaries, whether three miles as for most states or 10½ miles as for Texas and Florida in the Gulf of Mexico."
WASHINGTON EVENING STAR **May 1, 1953, p. A-2**	"The opposition failed twice yesterday in efforts to change the state ownership bill. * * * (As the bill stands, it establishes the three-mile limit of state jurisdiction, except for Texas and the West Coast of Florida, which extends 10.5 miles.)"
WASHINGTON POST **May 5, 1953, p. 2**	"Already approved by the House, the so-called 'Tidelands' Bill quitclaims to . . . coastal states . . . lands off their coasts—out to the limit of their historic seaward boundaries (three miles, except in the case of Texas and the Florida Gulf Coast, which has a limit of 10½ miles). * * * "Hill argued that 10½-mile limits set for Texas and Florida in the bill . . . violated international law . . ."
WASHINGTON POST **May 6, 1953, p. 1**	"The Senate Bill in effect quitclaims to the coastal states submerged . . . lands extending three miles offshore in all cases except Texas and the Gulf Coast of Florida, where the seaward limit would be 10½ miles."
NEW YORK TIMES **May 6, 1953, p. 1**	"General Eisenhower, however, had promised before his nomination last year to support state claims to the sea bottom within the historic boundaries. These run three miles out except in the Gulf of Mexico, where both Texas and Florida claim three leagues, or 10½ miles."
WASHINGTON EVENING STAR **May 6, 1953, p. 1**	"Under the Senate bill, State jurisdiction runs to the three-mile limit except for Texas and the West Coast of Florida on the Gulf of Mexico, where the limit will be 10.5 miles."
WASHINGTON POST **May 14, 1953, p. 1**	"It (the House) accepted, by a roll-call vote of 218 to 116, the Senate version of the much debated legislation which grants the states clear title to submerged lands and resources out to their historic boundaires. * * * "These seaward boundaries are three miles except for Texas and West Florida, where the limit is 10½ miles."
NEW YORK TIMES **May 14, 1953, p. 1**	"The House of Representatives gave final congressional approval

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WASHINGTON DAILY NEWS May 22, 1953, p. 3	"The new law gives coastal states title to submerged land out to their historic boundaries. These lie three miles seaward for all states except Texas and Western Florida, whose boundaries are recognized as 10½ into the Gulf of Mexico. * * *"
NEW YORK TIMES May 23, 1953, p. 1	"Under the terms of the bill, the states received title to submerged lands three miles out to sea, except in the Gulf of Mexico, where the historic boundaries of Florida and Texas are recognized as 10½ miles out."

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Appendix E

LEGISLATIVE ACTION OF THE PROVISIONAL GOVERNMENT OF TEXAS AND THE REPUBLIC OF TEXAS DEMONSTRATING THE EXERCISE OF JURISDICTION AND CONTROL OF THE COASTAL WATERS ALONG ITS SEAWARD BOUNDARY.

Date	Laws of Texas (Gammel)	Legislative Body	Subject Matter or Action Taken
Nov. 6, 1835	I, 524-525	Journals of the Consultation, 20-21	Report of Committee and resolution accepting offers of two New Orleans citizens, each to outfit an armed vessel and to patrol the Texas coast.
Nov. 9, 1835	I, 529	Journals of the Consultation, 25	Vote of gratitude and grant of one league of land to Capt. E. Hall of New Orleans, one of the citizens referred to above, presumably for his patrolling activities.
Nov. 13, 1835	I, 536	Journals of the Consultation, 32	On recommendation of Gen. Stephen F. Austin, the governor of the Provisional Government of Texas is given power to grant letters of marque and reprisal to cruisers upon the high seas.
Nov. 13, 1835	I, 539-540	Journals of the Consultation, 35-36	Art. IV. "Ordinance to establish a provisional government", makes the governor the commander-in-chief of the army and navy
Nov. 15, 1835	I, 555-556	Proceedings of the General Council, 7-8	Letters from 1) Fisher, in New Orleans, who is outfitting another vessel, this time for an attack on Tampico; 2) McKinney, on mouth of Brazos, who has raised a schooner and fought a small naval battle.
Nov. 15, 1835	I, 558	Proceedings of the General Council, 10	Message to the General Council from Gov. Smith recommends granting of letters of marque and reprisal to prevent invasion, blockade all the ports of Mexico and annoy and harass the enemy.
Nov. 16, 1835	I, 561	Proceedings of the General Council, 13	Standing committee of 3 members set up for Naval Affairs.

Nov. 18, 1835	I, 567-568	Proceedings of the General Council, 19	Report of the Committee on Naval Affairs, 1) setting up qualifications for grantees of letters of marque and reprisal and providing for the duration and extent of their operations (to end with the War and to include the whole Gulf of Mexico), and 2) recommending the purchase of four schooners ". . . to cruise in, and about the bays and harbours of our coast."
Nov. 19, 1835	I, 569-570	Proceedings of the General Council, 21-22	Report of the Committee on Military Affairs, as to organizing a Civil and Topographical Engineer Corps, stresses need to aid "...our, hereafter it is to be hoped, extensive commerce; (and) the peace and security of our maritime borders...", and the need to construct "....fortifications and works of defense, in Bays or Harbors...."
Nov. 19, 1835	I, 571-572	Proceedings of the General Council, 23-24	Amending and adopting the Report of the Committee of Naval Affairs. Ordinance and decree passed permitting grantees to take prizes on the high seas.
Nov. 20, 1835	I, 576	Proceedings of the General Council, 28	Gov. Smith urges the General Council to act promptly on the letters of marque and reprisal.
Nov. 22, 1835	I, 581	Proceedings of the General Council, 33	Additional amendments to ordinance for granting letters of marque and reprisal.
Nov. 24, 1835	I, 585-587	Proceedings of the General Council, 37-38	Gov. Smith objects to terms of ordinance for letters of marque and reprisal, but is pleased with (and wants to sever) the provisions about a Texas navy. Ordinance recommitted for further consideration.
Nov. 25, 1835	I, 588-589	Proceedings of the General Council, 40-41	New ordinances passed for 1) granting letters of marque and reprisal and 2) establishing a Navy.
Nov. 27, 1835	I, 592	Proceedings of the General Council, 44	Gov. Smith reports he has under consultation 1) the ordinance for letters of marque and reprisal, and 2) the decree for establishing the Navy.

STATUTES OF THE REPUBLIC OF TEXAS ON COASTAL WATERS CONTINUED

Date	Laws of Texas (Gammel)	Legislative Body	Subject Matter or Action Taken
Nov. 27, 1835	I, 593-597	Proceedings of the General Council, 45-49	Report of Committee on Finance includes estimates of revenue from duty on foreign tonnage, crops shipped from Texas, vessels used and needed, and recommendations for establishment of ports of entry, collectors and inspectors, and division of the coast into two districts.
Nov. 28, 1835	I, 597	Proceedings of the General Council, 49	Ordinance and decree introduced "to purchase munitions of war, provisions, arms, etc., for the army of Texas, and defence of the sea coast."
Nov. 29, 1835	I, 601-603	Proceedings of the General Council, 53-55	Gov. Smith recommends, and an ordinance is introduced, to give Maj. Samuel Whiting authority to go to New Orleans and to issue more letters of marque and reprisal to privateers.
Nov. 30, 1835	I, 604	Proceedings of the General Council, 56	Ordinance for letters to be issued by Whiting passed and enrolled.
Nov. 30, 1835	I, 608	Proceedings of the General Council, 60	Tender of services in the Navy of Texas of four men. Ordinance and decree "authorizing the Governor to grant registers to vessels, etc." introduced and enrolled.
Dec. 1, 1835	I, 611	Proceedings of the General Council, 63	Commission with letters of marque and reprisal granted to Col. Robert Potter.
Dec. 2, 1835	I, 615	Proceedings of the General Council, 67	Ordinance and decree authorizing Governor to grant registers to vessels, etc., presented and approved.
Dec. 3, 1835	I, 617-618	Proceedings of the General Council, 69-70	Recommendation by Committee on Naval Affairs to purchase a brig and a schooner; issuance of commission with letters of marque and reprisal to Benjamin F. Smith.
Dec. 3, 1835	I, 619	Proceedings of the General Council, 71	Communication on fitting out vessels of war, etc., from Lt. Francis B. Wright read and referred to committee.

Dec. 16 and 17, 1835	I, 669, 673-674	Proceedings of the General Council, 121-122, 125-126	Gov. Smith presents report from Col. Fannin on the taking, by Capt. Hurd, a comission-holder, of the schooner, Hannah Elizabeth, owned by the U.S. which had been captured by Mexico, and the pretended sale of the cargo and vessel under the most suspicious circumstances. President and Council constituted a court of admiralty; commission of three sent to investigate and adjudicate.
Dec. 17, 1835	I, 674	Proceedings of the General Council, 126	Report on possible blockade of Vera Cruz and Tampico by General Mexia, a Mexican revolutionary.
Dec. 17, 1835	I, 677	Proceedings of the General Council, 129	Ordinance and decree sequestering and securing the wreck and cargo of the schooner Hannah Elizabeth and instituting an inquiry.
Dec. 18, 1835	I, 683	Proceedings of the General Council, 135	Amendments to the ordinance to revise the revenue laws, as to means of collection of customs, etc.
Dec. 22, 1835	I, 688	Proceedings of the General Council, 140	Letters received concerning the wreck of the schooner, Hannah Elizabeth.
Dec. 25, 1835	I, 695	Proceedings of the General Council,147	Report of Committee on Military Affairs recommends the attempted taking of Matamoras in order to ". . . . command the Gulf of Mexico from that point to the city of New Orleans, and land our troops and supplies wherever we please."
Dec. 28, 1835	I, 706	Proceedings of the General Council, 158	The President of the Council submitted a communication respecting the schooner Hannah Elizabeth which was referred to a select committee with powers to send for persons and papers.
Dec. 28, 1835	I, 711	Proceedings of the General Council, 163	The President submitted a recommendation of Messrs. Johnson and Walker for appointment in the Navy On motion, their names were ordered to be placed on the list of applicants.
Jan. 3, 1836	I, 728	Proceedings of the General Council, 180	Gov. Smith transmits the reports of one of the Commissioners to investigate the transaction respecting the Hannah Elizabeth. He reports that the commission has not been executed.

STATUTES OF THE REPUBLIC OF TEXAS ON COASTAL WATERS CONTINUED

Date	Laws of Texas (Gammel)	Legislative Body	Subject Matter or Action Taken
Jan. 3, 1836	I, 729	Proceedings of the General Council, 181-182	Report from the Committee on Military Affairs in which reference is made to the proposed march on Matamoras: "It would also carry the war into the enemy's country; and with the vessels that will be floating upon the Gulf of Mexico in the service of Texas in one month, will give us the entire command of the Gulf, from Matamoras to New Orleans, over our enemies."
Jan. 3, 1836	I, 730	Proceedings of the General Council, 182-183	Offer from the firm of McKinney & Williams to sell two schooners to the Texas Navy. "Your committee are clearly of the opinion that every possible effort should be made to protect our own commerce, and to embarrass and destroy that of the enemy; and by the plan contemplated for the future operation of the army, both the munitions of war and supplies must be transported by water, consequently, a sufficient naval force is indispensable for giving certainty in effects to the objects of our future campaign as intended, and this naval preparation must be speedily made. Your committee therefore advised that a suitable agent be appointed to examine the schooner Invincible and her equipments, and if suited to the objects of cruising in the Gulf, or about our coast, that an immediate purchase be made of the vessel of Messrs. McKinney and Williams upon such terms as the future means of the country will justify." Recommendation of a system of officering and manning the vessels of the Texas Navy similar to the system of the United States was also made.
Jan. 4, 1836	I, 732	Proceedings of the General Council, 184	Application of Capt. John A. Delame for an appointment in the naval service.

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Jan. 5, 1836	I, 738	Proceedings of the General Council, 190	Ordinance and decree authorizing purchase of the two vessels from McKinney and Williams passed.
Jan. 6, 1836	I, 741	Proceedings of the General Council, 192-193	Communication from Gov. Smith states that he has heard that McKinney and Williams have received an armed vessel which is now in Texan waters and that he wants to know all the particulars so that he may advise our Texas agents.
Jan. 7, 1836	I, 745	Proceedings of the General Council, 197	Appointment of another Commissioner pursuant to the investigation of the case of the schooner Hannah Elizabeth, and other matters in connection with that case.
Jan. 7, 1836	I, 749	Proceedings of the General Council, 201	Message from Gov. Smith concerning the two schooners authorized to be purchased. He wants more specific authority to purchase the second schooner and proposes that the schooner shall be delivered over to William P. Harris, Collector of the Port of Galveston.
Jan. 8, 1836	I, 750	Proceedings of the General Council, 202	Ordinance authorizing the purchase of the two vessels passed by the House over the Governor's objections by a constitutional majority.
Jan. 8, 1836	I, 754	Proceedings of the General Council, 206	The Mexican's sloop of war, Montezuma, is reported to be in the Bay of Galveston and immediate issue of a register of the schooner Invincible, acquired from McKinney and Williams, is provided for with Mr. McKinney becoming Commander of the schooner. He is ordered: "To take command of said vessel of war and man and provide for a cruise against the enemy within the Gulf of Mexico or any of its waters, until further ordered...."
Jan. 16, 1836	I, 797	Proceedings of the General Council, 249	The President submitted a letter recommending Francis Desaugue for a situation in the Navy, which was read and ordered to be placed on file.

STATUTES OF THE REPUBLIC OF TEXAS ON COASTAL WATERS CONTINUED

Date	Laws of Texas (Gammel)	Legislative Body	Subject Matter or Action Taken
Jan. 17, 1836	I, 801	Proceedings of the General Council, 253	Resolution appointing an agent to take charge of the wreck of the schooner San Felipe and to report back to the Government the best disposition that could be made.
Mar. 9, 1836	I, 862	Proceedings of the Convention at Washington, 42	Article II, Draft of a Proposed Constitution grants to Congress power to declare war, to grant letters of Marque and Reprisal, to make rules concerning captures on land and water, provide and maintain a Navy, to raise and support Armies, and to make rules for the Government and regulation of the land and Naval Forces.
Mar. 10, 1836	I, 881	Proceedings of the Convention at Washington, 61	Upon receipt of information of the arrival of the Brutus and the Invincible, at the mouth of the River Brazos, destined for the service of the Republic of Texas, a select committee on naval affairs was appointed to inquire into and report on the commissioning of said vessels.
Mar. 10, 1836	I, 882	Proceedings of the Convention at Washington, 62	Report of the Special Committee on Naval Affairs.
Mar. 12, 1836	I, 891	Proceedings of the Convention at Washington, 71-72	"The Standing Committee on Naval Affairs by their Chairman S. R. Fisher reported that they had appointed and commissioned the following persons officers in the Naval Service of Texas, to-wit: George Wheelright, Captain to the schooner, Liberty; Charles Jeremiah Brown, Captain to schooner, Invincible; Hawkins, Captain to the schooner, Independence; William A. Herd, Captain to schooner, Brutus; Arthur Robertson, Captain of Marines. All bearing date the 12th of March, 1836.—Also that they had forwarded letters of instruction to said officers, copies of which were retained and filed with the Secretary of this Convention."

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Mar. 15, 1836	I, 896	Proceedings of the Convention at Washington, 76	Report of the Committee on Naval Affairs respecting the African slave trade stated: "Your committee felt bound to give it as their opinion, that the introduction of African Negroes, is in controvention of the existing treaties between most nations, and the existing laws of this land." The Committee recommended the suppression and outlawing of the slave trade.
Mar. 1, 1836	I, 910	Ordinances and Decrees of the Consultation, 6	Declaration of the people of Texas in General Convention Assembled. Plan and powers of the Provisional Government of Texas: "Article IV. The Governor for the time being, and during the existence of the provisional government, shall....be Commander-in-Chief of the Army and Navy, and of all of the military forces in Texas, by sea and land."
Mar. 1, 1836	I, 927	Ordinances and Decrees of the Consultation, 23	An Ordinance and Decree for granting letters of Marque and Reprisal authorizes all vessels to "cruise within the Gulf of Mexico, and shall be permitted, and they are hereby enjoined to make war upon, board, capture, or make prize of all vessels sailing under the Commission of the central Government of Mexico, and no other." Under the ordinance, Texas was to get twenty per cent of the proceeds of the sale of the prizes, the commissions were not granted for longer than six months, and the Governor was charged with determining the qualifications of the applicant.

STATUTES OF THE REPUBLIC OF TEXAS ON COASTAL WATERS CONTINUED

Date	Laws of Texas (Gammel)	Legislative Body	Subject Matter or Action Taken
Mar. 1, 1836	I, 931	Ordinances and Decrees of the Consultation, 27-28	"An Ordinance and Decree establishing a Navy. Section I. Be it ordained and decreed, and it is hereby ordained and decreed, by the General Council of the Provisional Government of Texas, that there shall be, and there is hereby established a Navy to consist of two schooners of twelve guns each, and two schooners of six guns each, with the requisite number of officers, seamen and marines for each schooner; and that the said schooner shall, as soon as practicable, purchase, arm, and equip for warlike operations, offensive and defensive; and that they be put in commission and fitted out, and ordered into actual service; and the Commander and Officers of said Navy shall be under the orders and directions of the Governor and Council."
Mar. 1, 1836	I, 942	Ordinances and Decrees of the Consultation, 38	An Ordinance and Decree supplementary to the prior one concerning that of letters of Marque and Reprisal, dated November 25, 1835.
Mar. 1, 1836	I, 943	Ordinances and Decrees of the Consultation, 40	An Ordinance and Decree imposes the duty upon the Governor to issue registers to all private ships, and to forward to the collectors of the customs at ports of entry, blank registers which may be filled up by them.
Mar. 1, 1836	I, 957	Ordinances and Decrees of the Consultation, 53	An Ordinance and Decree authorizing and requiring the Governor to give instructions to the Commissioners to the United States in regard to the issuance of letters of letters of Marque and Reprisal.

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Mar. 1, 1836	I, 967, 968, 976	Ordinances and Decrees of the Consultation, 63, 64, 72	An Ordinance and Decree for creating a General Postoffice Department. Section XI provides regulations for the customs collectors, under the direction of the Postmaster, to receive and charge postage on mail coming in from ships or vessels. Section XIII provides that the Postmaster shall establish routes for packet boats or other vessels plying regularly from one place to another along the coast.
Mar. 1, 1836	I, 983-988	Ordinances and Decrees of the Consultation, 79-84	"An Ordinance and Decree establishing and imposing duties upon imports and tonnage for other purposes," divides the coastline into revenue districts, establishes five ports of entry, and provides Anti-Smuggling Regulations, and the rates of the duties on goods coming into the country.
Mar. 1, 1836	I, 994-996	Ordinances and Decrees of the Consultation, 90-92	An Ordinance concerning the schooner Hanna Elizabeth which was wrecked and sold under suspicious circumstances. It sets up a Commission to investigate the matter and report back to the Provisional Government.
Mar. 1, 1836	I, 1008-1016	Ordinances and Decrees of the Consultation, 104-113	An Ordinance and Decree repealing the prior one for regulation of customs and revenue districts and anti-smuggling measures, and substituting a new Ordinance in its place.
Mar. 1, 1836	I, 1024-1025	Ordinances and Decrees of the Consultation, 120-121	An Ordinance and Decree which provides for criminal penalties for "any master or owner of any ship or vessel, or for any other persons whatsoever, to import, bring, or induce, or aid in importing, bringing or inducing any free Negro or Mulato within the limits of Texas, directly or indirectly."
Mar. 1, 1836	I, 1031-1033	Ordinances and Decrees of the Consultation, 127-129	An Ordinance and Decree providing for the purchase of the schooners, William Robbins and Invincible, and for the adoption of a Naval system similar to that practiced in the United States for the Naval Department of Texas.

STATUTES OF THE REPUBLIC OF TEXAS ON COASTAL WATERS CONTINUED

Date	Laws of Texas (Gammel)	Legislative Body	Subject Matter or Action Taken
Mar. 1, 1836	I, 1053	Ordinances and Decrees of the Consultation, 149	Executive Ordinance of the General Convention assembled to draft a Constitution. The second resolution provides, *inter alia*, for a Secretary of the Navy.
Mar. 17, 1836	I, 1073	I Laws of the Republic of Texas, 13	The first Constitution of the Republic of Texas provides, among other things, that Congress shall have the power "to provide and maintain an Army and Navy, and to make all laws necessary for their government," and also makes provisions for the handling of admiralty cases.
Oct. 25, 1836	I, 1087	I Laws of the Republic of Texas, 27	"An Act authorizing the President of the Republic to appoint his cabinet officers." "Be it enacted ... that the President be ... authorized to appoint ... a Secretary each of the Treasury, War, and Navy Departments ...."
Nov. 18, 1836	I, 1090	I Laws of the Republic of Texas, 30	"An Act providing for an increase of the Navy" provides for purchase of one sloop, two armed steam vessels, and two schooners by persons to be appointed by the President.
Dec. 10, 1836	I, 1132	I Laws of the Republic of Texas, 72	"An Act adopting a National Seal and Standard for the Republic of Texas." Several types of seals and flags are adopted, including, "Section V. Be it further enacted, that the National Flag for the Naval Service for the Republic of Texas is adopted by the President at Harrisburg on the 9th day of April, 1836, the confirmation of which is Union Blue, star central, thirteen stripes prolonged, alternate red and white, be and the same is hereby ratified and confirmed, and adopted as the future National Flag for the Naval Service for the Republic of Texas."

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Dec. 13, 1836	I, 1137	I Laws of the Republic of Texas, 77	A joint resolution, defining the duties of the heads of the Departments of the Government including that of the Secretary of the Navy.
Dec. 17, 1836	I, 1146-1193	I Laws of the Republic of Texas, 86-133	"An Act establishing regulations and instructions for the Government of the Naval Service of Texas."
Dec. 19, 1836	I, 1193	I Laws of the Republic of Texas, 133-134	"An Act to define the boundaries of the Republic of Texas." This Act provides that Texas' boundary shall be three leagues from land.
Dec. 20, 1836	I, 1207-1208	I Laws of the Republic of Texas, 147-148	An Act providing for duties on various types of imports, and a levy upon all vessels of the burthen of ten tons and upward, arriving in any port in Texas from a foreign port.
Dec. 20, 1836	I, 1286-1287	I Laws of the Republic of Texas, 226-227	An Act providing for duties on various types of items, and on vessels of certain weights. Methods for confiscation and sale of goods by the customs collectors are provided for in the case of non-payment of duties.
June 7, 1837	I, 1300	I Laws of the Republic of Texas, 240	"An Act to regulate the pay of Pursers in the Navy."
June 7, 1837	I, 1307	I Laws of the Republic of Texas, 247	"An Act to prescribe the mode of holding the Courts of Admiralty."
June 12, 1837	I, 1315-1316	I Laws of the Republic of Texas, 255-256	"An Act to raise a public revenue by impost duties." Provides for various duties on different types of items, and divides the coastline up into several districts or ports of entry, with a custom house for each.
June 12, 1837	I, 1327	I Laws of the Republic of Texas, 267-268	"An Act to dispose of Galveston and other islands of the Republic of Texas." provides for all islands within the Republic to be sold at auction to the highest bidder in the City of Houston for the purpose of raising money for the Army and Navy.

STATUTES OF THE REPUBLIC OF TEXAS ON COASTAL WATERS CONTINUED

Date	Laws of Texas (Gammel)	Legislative Body	Subject Matter or Action Taken
Nov. 2, 1837	I, 1353	II Laws of the Republic of Texas, 11-12	"Joint resolution granting letters of Marque and Reprisal" grants the letters, strictly against the shipping of Mexico and ".... in strict accordance with the established laws of Nations, and special laws of this Republic, on the subject of privateering...."
Nov. 4, 1837	I, 1355-1356	II Laws of the Rebublic of Texas, 13-14	"An Act for augmenting the Navy, and making an appropriation therefor." This Act appropriates $280,000 and authorizes a loan of $5,000,000 to be negotiated in order to purchase one 500-ton brig, two 300-ton brigs and three 130-ton schooners, and to arm and outfit the same.
Dec. 14, 1837	I, 1392	II Laws of the Rebublic of Texas, 50	Joint resolution for the purchase of a steamer for national defense.
Dec. 14, 1837	I, 1393	II Laws of the Rebublic of Texas, 51	An Act to pay the officers and soldiers of the Army and Navy.
Dec. 14, 1837	I, 1394	II Laws of the Rebublic of Texas, 52	An Act supplementing "An Act to pay the officers and soldiers and sailors of the Army and Navy."
Dec. 8, 1837	I, 1428-1429	II Laws of the Rebublic of Texas, 86-87	An Act to encourage steam navigation of the Gulf of Mexico by steam packets...."
May 11, 1838	I, 1478	III Laws of the Republic of Texas, 8-9	An Act to incorporate a company to make navigable for steamboats the Caney River and provide for inter-communication at the head of Matagorda Bay, Cedar Lake, and with the Colorado River, and for deepening the channel at the mouth of said creek or river.
May 23, 1838	I, 1495-1496	III Laws of the Republic of Texas, 25-26	Joint resolution in favor of the officers and crews of the schooners of war, Invincible and Brutus, awards them "one-half the avails of the prizes made by said vessels on their last cruise."

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May 23, 1838	I, 1496-1497	III Laws of the Republic of Texas, 26-27	An Act providing that the customs collector can appoint pilots, inspect their boats, etc., for the ports throughout the Republic.
May 24, 1838	I, 1503	III Laws of the Republic of Texas, 33	An Act allowing A. C. Horton a set-off as salary for services as a Navy Agent, to be allowed by the Secretary of the Navy, against claims now held by the Government against him.
May 24, 1838	I, 1521-1522	III Laws of the Republic of Texas, 51-52	An Act requiring the Collector of the Port of Velasco to dispatch all vessels which may arrive at that port destined to Brazoria or Columbia to their place of destination with an officer on board to deliver cargoes and secure or receive the duties thereon.
Jan. 1, 1839	II, 32	1st Session, 3rd Congress, 32	Joint resolution admits the claim of H. Sanderson on account of Naval supplies, and authorizes payment by the Secretary of the Treasury.
Jan. 10, 1839	II, 39	1st Session, 3rd Congress,39	An Act confirming the purchase of the steam vessel, Charleston, for $120,000, and providing for payment in cash or in land at the election of the vendor.
Jan. 10, 1839	II, 40	1st Session, 3rd Congress, 40	An Act repealing a prior exemption and providing: "...that in the future all steam packets or freight vessels propelled by steam shall pay the same tonnage and other port charges as other vessels do."
Jan. 22, 1839	II, 66	1st Session, 3rd Congress, 66	An Act providing for the allowance of salaries for two port collectors.
Jan. 23, 1839	II, 77	1st Session, 3rd Congress, 77	An Act establishing an additional port of entry, defining an area within its boundaries and providing for a collector of revenues, customs, and import duties.
Jan. 26, 1839	II, 113	1st Session, 3rd Congress, 113	An Act requiring the Secretary of the Navy to have surveyed the bars and passages of bays and harbors of Texas.
Jan. 26, 1839	II, 120	1st Session, 3rd Congress, 120	An Act providing for settlement of claims of certain individuals by the Secretary of the Navy.

STATUTES OF THE REPUBLIC OF TEXAS ON COASTAL WATERS CONTINUED

Date	Laws of Texas (Gammel)	Legislative Body	Subject Matter or Action Taken
Jan. 26, 1839	II, 129	1st Session, 3rd Congress, 129-130	An Act making appropriations for the Naval Service for the year 1839, includes the purchase of six vessels of war.
Feb. 5. 1840	II, 209-225	Session of 4th Congress, 35-51	An Act, regulating all taxes and duties on imports, provides for a report to be made by all ships arriving at any port of entry within Texas to the collector of customs.
Feb. 4, 1840	II, 245	Session of 4th Congress, 71	An Act to pay all individuals, and their heirs, for personal services rendered and for supplies furnished to the Army and Navy.
Feb. 5, 1840	II, 247	Session of 4th Congress, 73-74	An Act providing for the use of Navy vessels as revenue cutters directs the President "to instruct the Secretary of the Navy, to keep constantly employed, until otherwise provided for, one or more of the armed schooners now in commission, on the coast of Texas, from the mouth of the Sabine inlet to the mouth of the Rio Bravo del Norte, for the protection of the revenue, which vessel or vessels shall perform the service and duties of revenue cutters..."
Jan. 7, 1840	II, 282-284	Session of 4th Congress, 108-110	An Act providing for the erection of lighthouses and the collection of fees for all vessels coming into or going out of a port.
Jan. 25, 1840	II, 354	Session of 4th Congress, 180-181	Joint resolution prohibiting the Secretary of the Navy from removing the Navy Yard from its location on Galveston Island to any other place until accurate surveys of all the ports and harbors had been made and submitted to Congress.
Feb. 5, 1840	II, 364	Session of 4th Congress, 190	"An Act to fix the Naval establishment of the Republic of Texas."
Feb. 3, 1840	II, 381-386	Session of 4th Congress, 207-212	An Act for making appropriations for the support of Government for the year 1840, including the Navy.

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Dec. 13, 1839	II, 393	Session of 4th Congress, 219	An Act making the City of Aransas a port of entry.
Jan. 25, 1840	II, 420	Session of 4th Congress, 246-247	Joint resolution making an appropriation as an indemnity for the capture and detention of the British schooner, Eliza Russell, by the Texian armed schooner, Invincible, and providing for payment to be made.
Jan. 4, 1841	II, 479	Session of 5th Congress, 15-18	"An Act for the regulation of the coasting trade and protection of Texian shipping."
Jan. 21, 1841	II, 511-513	Session of 5th Congress, 47-49	An Act abolishing two ports of entry and establishing another.
Jan. 23, 1841	II, 521-525	Session of 5th Congress, 57-61	"An Act to regulate the proceedings of the district courts when sitting as courts of admiralty."
Jan. 18, 1841	II, 569	Session of 5th Congress, 105-107	An Act reorganizing the military and Naval establishments of the Republic.
Feb. 5, 1841	II, 571	Session of 5th Congress, 107-111	An appropriations act for 1841, including provisions for the Navy.
Feb. 4, 1841	II, 605	Session of 5th Congress, 141	"An Act to consolidate the several appropriations for the Navy Department, for the year 1840."
Feb. 4, 1841	II, 609	Session of 5th Congress, 145	A joint resolution requiring a Court of Inquiry into the case of Capt. A. C. Hinton, late Commander of the steamship "Zavala", in the Naval Service of the Republic.
Feb. 3, 1841	II, 626	Session of 5th Congress, 162	Joint resolution providing for the same salary for the head of the Naval bureau as for the heads of other bureaus.

STATUTES OF THE REPUBLIC OF TEXAS ON COASTAL WATERS CONTINUED

Date	Laws of Texas (Gammel)	Legislative Body	Subject Matter or Action Taken
Feb. 14, 1841	II, 655-662	Session of 5th Congress, 1841, Appendix, 1-8	A proclamation by the President of the Republic of Texas of the treaty with France ratified Feb. 14, 1841, providing for recognition of Texas, and various provisions concerning the relations of the two countries if either should be engaged in a war against a third country. These provisions cover the method of treatment of goods, prisoners, etc., upon a neutral vessel, duties under a blockade by either country, and provisions when one of the two countries' vessels is forced into the port of another by distress.
Dec. 11, 1841	II, 684-686	Session of 6th Congress, 12-14	An Act concerning personnel and appropriations for the Department of War and Navy.
Jan. 24, 1842	II, 733-734	Session of 6th Congress, 61-62	An Act amending the prior Act for procedure of the district courts sitting in admiralty.
Jan. 27, 1842	II, 734-737	Session of 6th Congress, 62-65	A supplementary revenue act providing for various duties on different types of imports, setting salaries of the collectors of the customs at various ports, establishing new collectoral district, and laying tonnage duties on merchant vessels and steamboats, according to registered tonnage.
Feb. 3, 1842	II, 765	Session of 6th Congress, 93	An Act "establishing the pay of officers of the Texas Navy."
Feb. 3, 1842	II, 767-771	Session of 6th Congress, 95-99	Appropriations acts for 1842, including appropriations for the salary of the Secretary of War and Navy and for pay of officers and seamen of the Navy.
Feb. 3, 1842	II, 771	Session of 6th Congress, 99	"Joint resolution for the removal of the custom house, District of Aransas."
Feb. 4, 1842	II, 773-775	Session of 6th Congress, 101-103	"An Act regulating the apppointment and duties of pilots at the port of Galveston."

Feb. 5, 1842	II, 791	Session of 6th Congress, 119	Joint resolution respecting the steamship, Zavala.
July 25, 1842	II, 812	Special Session of 6th Congress, 4	An Act regulating the manner in which collectors of customs are to collect duties on imports.
July 23, 1842	II, 813	Special Session of 6th Congress, 5-6	"Joint resolution making appropriations for the support of the Navy."
Jan. 6, 1843	II, 828-830	Session of 7th Congress, 8-10	An appropriations act for the year 1843 including appropriations for the Secretary of War and Marine.
Jan. 14, 1843	II, 837	Session of 7th Congress, 17-18	"An Act for the protection of the sea coast." Makes appropriations for the erection of fortifications for the better protection of Galveston Harbor, the mouth of the Brazos River, and the pass into Matagorda Bay.
Sept. 16, 1842	II, 880-885	Presidential Proclamation	Treaty of Commerce and Navigation between the Republic of Texas and Great Britain, provides, among other things, for each party not to charge any duties or other fees on the other's vessels which are not charged on domestic vessels. Both merchant ships and ships of war are entitled to go into ports and harbors of the other country.
Sept. 16, 1842	II, 889-904	Presidential Proclamation	Treaty between the Republic of Texas and Great Britain for the suppression of the African Slave Trade. Declares the slave trade piracy, pursuant to the Texas Constitution, and provides regulations for its suppression. Any vessel of either country attempting to carry on the slave trade loses all claim of protection of that country's flag. The ships of either country commanded by a certain rank or higher, shall have the right of inspection of any vessel of their or the other country's suspected of carrying on the slave trade. However, this right of inspection is excepted from the Gulf of Mexico.

STATUTES OF THE REPUBLIC OF TEXAS ON COASTAL WATERS CONTINUED

Date	Laws of Texas (Gammel)	Legislative Body	Subject Matter or Action Taken
Jan. 4, 1843	II, 905-912	Presidential Proclamation	A Treaty of Amity, Commerce and Navigation between Texas and the Netherlands, including provisions on: rights of entry into ports, rivers and harbors, duties charged by either country against the other's vessels, policing of ports, loading and unloading ships, and provisions in case of ship wreck.
Feb. 1, 1844	II, 969	Session of 8th Congress, 57	"An Act to amend an Act for the regulation of the coasting trade and the protection of Texian shipping."
Feb. 1, 1844	II, 972	Session of 8th Congress, 60-61	Joint resolution requiring an auditor "to settle the accounts of E. W. Moore, for disbursements of money received from the Government of Yucatan, and for supplies for provisions and stores, furnished the Navy, while in active service in command of the maritime force of the Republic."
Feb. 2, 1844	II, 976	Session of 8th Congress, 64	A joint resolution for moving the customs house of the district of Calhoun from Port Calhoun to Port Caballo.
Feb. 2, 1844	II, 976-977	Session of 8th Congress, 64-65	A joint resolution granting a midshipman a pension for services rendered, and for "having been severely wounded on board the slop of War Austin, in an action with the Mexican steamers Guadalupe and Montezuma, off Campeachy, on the 16th of May last."
Feb. 3, 1844	II, 998-999	Session of 8th Congress, 86-87	An Act amending the Act providing for wreckmasters of vessels wrecked on the coast.
Feb. 5, 1844	II, 1011	Session of 8th Congress, 99	A joint resolution provides a pension for disabled seamen, marines and landsmen, who were wounded in the action off the coast of Yucatan on May 16, 1843.

Feb. 5, 1844	II, 1017	Session of 8th Congress, 105	"An Act for the protection and encouragement of the commerce of the Republic of Texas," provides for a duty upon all foreign vessels belonging to powers with whom the Republic had not entered into a treaty and for only vessels bearing the flag of the Republic to ply the coasting trade.
Feb. 5, 1844	II, 1018-1022	Session of 8th Congress, 106-111	The appropriations act for 1844 includes items pertaining to naval affairs.
Feb. 5, 1844	II, 1027	Session of 8th Congress, 115	An Act authorizing the Secretary of War and Marine to receive proposals for keeping in ordinary the vessels: the ship, Austin, brigs, Wharton and Archer, and schooner, San Bernard.
Feb. 5, 1844	II, 1028	Session of 8th Congress, 116	An Act making appropriations for part-pay of officers and seamen of the Navy for the years 1842 and 1843.
Feb. 5, 1844	II, 1030	Session of 8th Congress, 118	A joint resolution providing for a tribunal to be set up for the trial of Post Capt. E. W. Moore, and that Capt. Moore be furnished with a copy of the charges and specifications against him.
Feb. 1, 1845	II, 1109	Session of 9th Congress, 63-64	"An Act regulating tonnage duties and the coasting trade."
Feb. 1, 1845	II, 116-120	Session of 9th Congress, 70-74	The appropriations act for the year 1845 includes items for expenses of the War and Marine Department and an amount for keeping the Navy in ordinary.
Feb. 3, 1845	II, 1134	Session of 9th Congress, 88	An Act providing for regulations of customs.
Feb. 3, 1845	II, 1135-1138	Session of 9th Congress, 89-92	"An Act to authorize the transportation of goods coastwise."
Feb. 3, 1845	II, 1166	Session of 9th Congress, 120	"An Act to establish a lighthouse at Paso Caballo": provides for specifications and regulations by the collector of customs.

STATUTES OF THE REPUBLIC OF TEXAS ON COASTAL WATERS CONTINUED

Date	Laws of Texas (Gammel)	Legislative Body	Subject Matter or Action Taken
June 23, 1845	II, 1200-1202	Extra Session of 9th Congress, 4-6	"Joint resolution giving the consent of the existing government to the annexation of Texas to the United States." This is the joint resolution of the Texas Senate and House of Representatives, accepting the terms of the joint resolution passed by the United States Senate and House.
June 27, 1845	II, 1212	Extra Session of 9th Congress. 16	A joint resolution to establish a mail route between Galveston and New Orleans, by chartering any Texian vessel, plying between the above named ports, for carrying the public mail.
June 28, 1845	II, 1215	Extra Session of 9th Congress, 19	A joint resolution for relief of disabled seamen, landsmen, and marines who were wounded in the action of May 16, and April 30, 1843, off the coast of the Yucatan.

Appendix F

LIST OF PUBLISHED ACCOUNTS OF THE ACTIVITIES OF THE TEXAS NAVY

Of the published accounts of the activities of the Texas Navy the more complete ones are:

Dienst, Dr. Alex, *The Navy of the Republic of Texas*, 1909;

Douglas, C.L., *Thunder on the Gulf or The Story of the Texas Navy*, 1936;

Hill, Jim Dan, *The Texas Navy*, 1937.

Other brief accounts or references may be found in:

Baker, D. W. C., *A Texas Scrapbook*, 1875, pp. 70-80;

Bancroft, H. H., *A History of the North American States and Texas*, 1886, vol. 16, pp. 271-272, 283-284, 350-352;

Barker, Eugene, *Texas History*, 1929, p. 357;

Brown, John Henry, *History of Texas*, 1893, vol. 2, pp. 85, 126-128, 198-200;

Christian, A. K., *Mirabeau Bounaparte Lamar*, 1922, pp. 45-50, 150, 157-162;

Johnson, Frank W., *A History of Texas and Texans*, 1916, pp. 77-79, 314, 328, 459, 469-470;

Houston, Andrew Jackson, *Texas Independence*, 1938, pp. 268-286;

Moore, Commodore E. W., *To the People of Texas*, 1843;

Moore, Francis J., *Map and Description of Texas*, 1840, p. 40;

McMaster, J. B., *A History of the People of the United States from the Revolution to the Civil War*, Vol. 6, 1910, pp. 269-270;

Roemer, Dr. Ferdinand, *Texas*, 1849, p. 51;

Schmitz, Joseph William, *Texan Statecraft*, 1941, pp. 52-54, 135-139;

Thrall, H. S., *A Pictorial History of Texas*, 1885, pp. 219, 298-299;

Yoakum, Henderson K., *History of Texas*, 1855, vol. 2, pp. 124, 212-213, 216-217, 271, 307, 381-384.

Appendix G

COPY OF AFFIDAVIT SHOWING DEPARTMENT OF INTERIOR'S CONSTRUCTION OF SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT

STATE OF TEXAS)
COUNTY OF TRAVIS)

BEFORE ME, the undersigned authority, on this 29th day of July, 1958, personally appeared BILL ALLCORN, to me well known, who after being by me duly sworn, did depose and say:

"I am Commissioner of the General Land Office of the State of Texas.

"That the papers, records, and documents of the General Land Office of the State of Texas show:

"That from May 22, 1953, the effective date of the Submerged Lands Act, to date, the General Land Office has held nine sales of mineral leases in submerged lands off the coast of Texas and between the three mile and three marine league lines;

"That the dates of these sales were: September 1, 1953; December 1, 1953; September 7, 1954; May 3, 1955; September 6, 1955; July 3, 1956; December 4, 1956; June 4, 1957; and March 4, 1958;

"That a total of 311 tracts, comprising approximately 472,310 acres, have been offered for lease and a total of some 165 tracts, comprising approximately 313,672 acres, have actually been leased, and the total consideration, or bonus, paid to the State for these leases was more than $20,000,000.00;

"That on the permanent mailing list maintained by the General Land Office for the purpose of sending notices of all lease sales conducted by the School Land Board of the State of Texas, is the U. S. Department of Interior, 650 Federal Building, New Orleans, Louisiana;

"That four copies of these notices are transmitted to this addressee in the normal course of business;

"That no protest of Texas lease sales have been made by this or any other arm of the Federal Government;

"That the Department of the Interior and the General Land Office have in general cooperated in the administration of the submerged lands areas under their respective jurisdictions since the effective date of the Submerged Lands Act;

"That in lease sales, the line three marine leagues from the coast of Texas has been respected by each, the General Land Office leasing only within, and the Department of the Interior leasing only without, that line;

"That the Department of the Interior has by agreement utilized inspectors employed by the General Land Office to supervise geophysical activities by Federal permittees."

BILL ALLCORN

SUBSCRIBED and sworn to before me, by the said BILL ALLCORN, this 29th day of July, 1958, to certify which, witness my hand and seal of office.

(Seal) MARTHA ALWORTH
Notary Public, Travis County, Texas

Appendix H

TELEGRAM FROM GOVERNOR DANIEL TO PRESIDENT EISENHOWER AND THE PRESIDENT'S REPLY

WESTERN UNION TELEGRAM
10/29/57

The Honorable Dwight D. Eisenhower
President of the United States
The White House
Washington, D. C.

Have just been advised that Department of Justice is preparing to file a lawsuit Monday challenging the validity of the original three league boundary of Texas in the Gulf of Mexico and seeking to establish not only a present three mile line but also to recover from the State of Texas even the subsoil and right to explore and develop the minerals between the three mile and the three league lines. This action would violate the promise made by the President of the United States before Texas entered the Union that the Nation would uphold and defend our boundaries as Texas claimed them to be and it would violate the Texas annexation agreement, the Treaty of Guadalupe Hidalgo with Mexico, and your own statements in defense of Texas' position. During our last visit on this subject it was my impression that Justice and State Departments would acknowledge that Submerged Lands Act gives Texas the right to explore the natural resources out to the

original boundary of three leagues even though they might contend that the present boundary is three miles. If it is true that any such lawsuit is contemplated by your Administration to take away all rights beyond three miles then I sincerely request an opportunity to present to you in person the views of this State before any such action is permitted.

Respectfully yours,

PRICE DANIEL
Governor of Texas

THE WHITE HOUSE
Washington

November 7, 1957

Dear Price:

In further response to your telegram of October twentieth, the State of Texas, in my view, should have the right to explore and exploit the submerged lands extending seaward of the Texas coastline for a distance of three marine leagues into the Gulf of Mexico. I earnestly hope that the Submerged Lands Act establishes this as a matter of law.

As you realize, it is appropriate, of course, for the Supreme Court to consider and decide whether

the Submerged Lands Act does, as a matter of law, accomplish this purpose.

In any action that it may be necessary for the Attorney General to take by reason of the June twenty-fourth order of the Supreme Court, the statements that I have publicly made which bear upon this controversy will be presented to the Court, as will the statements made by the Attorney General which, as you know, accorded with my own.

I fully appreciate your interest in this matter and want to thank you for telegraphing me as you did.

With warm regard.

Sincerely,

/s/ DWIGHT D. EISENHOWER

The Honorable Price Daniel
Governor of Texas
Austin, Texas